

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

(HYBRID COURT)

**BEFORE SH. UDAYAN DASGUPTA, JUDICIAL MEMBER
AND SH. KRINWANT SAHAY, ACCOUNTANT MEMBER**

I.T.A. No. 203/Asr/2024
Assessment Year: 2017-18

Amit Sharma,
C/o M/s P. Ram Chand & Co.,
Basti Nau, Jalandhar, Punjab
144002

Vs.

Deputy Commissioner of Income
Tax, Jalandhar

[PAN: AOOPS 3660Q]

(Appellant)

(Respondent)

Appellant by : Sh. Sandeep Vijn, C. A.
Respondent by : Sh. Manpreet Singh Duggal, Sr. D. R.
Date of Hearing : 20.03.2025
Date of Pronouncement : 27.03.2025

ORDER

Per Udayan Dasgupta, J.M.:

This appeal is filed by the assessee against the order of Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 28/02/2024 passed u/s 250(6) of the Income Tax Act, 1961 which has emanated from the order of the DCIT/ACIT, Circle-1, Jalandhar dated 27.12.2019 passed u/s 143(3) of the I.T. Act, 1961.

2. The grounds of appeal taken by the assessee in form 36 are as follows:

- “1. *That the order of Ld. CIT(A) dated 28/2/2024 deserves to be set aside and restored to the file of CIT(A) as the request for adjournment of appeal was not properly appreciated and the appeal was decided without intimating the fresh date of hearing.*
2. *The ld. CIT(A) has erred in upholding the action of the Assessing Officer regarding the applicability of section 115BBE on the income surrendered at the time of survey and which was offered to tax in the return of income. Even the submissions made before the Assessing officer were not considered and dealt with while disposing off the appeal.*
3. *The ld. CIT(A) has erred in confirming the levy of interest u/s 234A and 234B.”*

3. The brief facts of the case are that the assessee is a partner in two partnership firms *M/s P Ram Chand & Co. and M/s Spartan Sports Co.*, and has returned a total income of Rs.87,58,360/- (*including an amount of Rs.75,65,000/- under the head “other sources”*) which has been subsequently assessed u/s 143(3) of the Act at the same figure, but the income disclosed by the assessee under the head ‘*income from others sources*’ amounting to Rs.75,65,000/- has been subjected to taxation under the deeming provisions of section 69A and has been charged to tax, at rates prescribed u/s 115BBE of the Act, 1961.

4. The matter was carried in appeal and the Id. CIT(A) has dismissed the appeal in absence of any written submissions being filed by the assessee and in absence of any explanations or representations to various notices issued by the first appellate authority by observing as follows:

“Consequent to the filing of appeal by the appellant this office has issued four notices on 11/03/2020, 25/02/2021, 06/09/2023 and 02/01/2024 giving the opportunities to the appellant to upload a submission and substantiation against the grounds raised in the appeal. Whereas, it is observed that the appellant has responded, requesting for adjournment after adjournment and has not uploaded his submission. Finally, on 02/02/2024, the appellant stated that written submissions would be uploaded on 15/02/2024. However, till 27th Feb 2024, the appellant has not uploaded his submissions. Therefore, it is deemed that the appellant does not want to pursue the appeal by filing the submissions. Under the circumstances, the pending appeal is decided based on the material available in the system.

It must be mentioned here that with the substituted Taxation laws (second amendment) Act 2016, w.e.f 01/04/2017 the sub-clause (i) to sub-section (1) of section 115BBE has been amended wherein the tax on the income referred to in section 68 or section 69 or section 69A or section 69B or section 69C or section 69D the rate of tax applicable is 60% on such income. Admittedly, the income offered by the appellant was for the AY 2017-18 for which the rate of tax applicable is 60%. Therefore, the AO has rightly charged the income at 60% by applying the provisions of Sec. 115BBE.

In the light of these observations, there is no merit in the ground raised, as such, the ground raised is dismissed.”

5. Now, the assessee is in appeal before the Tribunal on grounds contained in the memorandum of appeal and in course of hearing, it is submitted by the assessee that the proper opportunity of hearing has not been granted by the ld. first appellate authority. The ld. AR of the assessee submitted that the notice u/s 250 of the Act dated 02.01.2024 was sent to the assessee for furnishing of submissions by 09.01.2024. In response to such notices, the assessee sought adjournment vide letter dated 08.01.2024 requesting for adjournment till first week of February, 2024 on the ground that certified copy of documents which are part of the assessment records has been asked for, from the Assessing Officer, which is not yet received and the same forms an integral part of the submissions of the assessee. He further submitted that the documents has been received from the AO on 2nd February, 2024 and the written submissions are under preparation on the basis of such documents and as such another adjournment request was filed on 2nd February, 2024 praying for adjournment till 15th February, 2024. He further submitted that thereafter no further notice has been received from the office of the ld. first appellate authority and the ld. CIT(A) has dismissed the appeal without adjudicating on merits. As such, he prays that in the instant case, proper opportunity has not been granted to explain his case and he prayed for remanding the matter back to the files of the ld. first appellate authority.

6. The Id. DR has no objection if the matter is remanding back to the files of the Id. first appellate authority.

7. We have heard the rival submissions and considered the materials on record and we find that the letters for seeking adjournments has been filed on 8th January, 2024 and also on 2nd February, 2024 before the Id. first appellate authority in the online portal and the Id. CIT(A) has passed the order ex-parte without any further opportunity, on 28.02.2024.

8. As such, we are of the opinion that in the instant case proper justice will be served if the matter is remanded back to the files of the Id. first appellate authority for adjudicating on all the grounds contained in Form 35 on merits of the case after allowing a reasonable opportunity of being heard to the assessee and the assessee is also directed to file all necessary documentary evidences and written submissions and to fully cooperate with the Id. CIT(A) for proper disposal of the case.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 27.03.2025

Sd/-
(Krinwant Sahay)
Accountant Member

Sd/-
(Udayan Dasgupta)
Judicial Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order