

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

(VIRTUAL COURT)

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos. 208 & 37/Asr/2022 & 2023
Assessment Year: 2017-18

Sh. Bashir Ahmad Sofi
Nowhatta, Srinagar
[PAN: AXTPS 5314F]
(Appellant)

V. Income Tax Officer,
Ward-1, Srinagar
Rajbagh, Srinagar
(Respondent)

Appellant by Sh. Tasir Ul Islam, Adv.

Respondent by Sh. Ravinder Mittal, Sr. DR

Date of Hearing : 24.04.2023
Date of Pronouncement : 28.04.2023

ORDER

Per Dr. M. L. Meena, AM:

Both the appeals have been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi even dated 14.09.2022 in respect of Assessment Year: 2017-18.

2. The assessee has raised the following common grounds of appeal in ITA No. 208/Asr/2022 and ITA No. 37/Asr/2023:

- “1. That the impugned demand order passed by Ld Commissioner of Income Tax (Appeals) is arbitrary, unwarranted, unjustified and exorbitant which deserves to be deleted.
2. The Ld. Commissioner of Income Tax (Appeals) in para 5.3 of the Order U/S 250 of Income Tax Act, 1961 has erred to acknowledge the fact that Service of Notice is a jurisdictional requirement and has completely overlooked the judgment in the matter of **Commissioner of Income Tax (Central)-I Vs Chetan Gupta on 15 September, 2015, Delhi High Court** As per Section 148, “ITO **shall serve** upon the **Assessee** a notice before assessment, reassessment or re-computation”

In this instant case, Onus is not on the assessee to inform the department regarding his address as the Assessing Officer clearly has the knowledge of the appellant's actual address vis a vis Bank Statements.

Further, it is settled law that it is the duty of the revenue to establish that the service of an order or a notice was made on the assessee himself or on somebody duly authorized by him in that behalf and it is pertinent to mention that the appellant never received any of the mandatory notices as mentioned in the impugned assessment order hence the impugned assessment order passed by the Ld. A.O and sustained by the Ld Commissioner of Income Tax(Appeals) is void ab initio, vague and bad in law and deserves to be quashed.

*We would also like to emphasize on the case law of “**DCIT Circle-18(1), Room No. 211 A, CR Building, New Delhi. Vs. Usha Stud & Agricultural Frms (P) Ltd, Khasra 22/2, 4,4,/1,7/1, 8, 9, 12, 13,14, near 21A, Palam Farms, Shalarpur Bijwasan, New Delhi IN THE INCOME TAX APPELLATE TRIBUNAL DELHI BENCH: H : NEW DELHI***

Where it has been corroborated by the Worthy ITAT Bench of Delhi “When the assessee pleads that he has not been properly served with any notice, it is for the Department to place the relevant material to substantiate the plea that the assessee was served with prior notice. In the present case,

*no material is on record to show that the person to whom the notice is alleged to have been served was specifically authorized to receive notice, rather that person is not identifiable till date despite repeated requests made on behalf of the appellant and even after instructions by the undersigned, the A.O, has not been able to name the person to whom the notice was served. **“The most fundamental requirement on service has not been established”**.*

*In the instant case also, the postal reference numbers which are in fact provided by the department itself vide written order u/s 7(1) of the RTI Act 2005, dated **02-03-2022** are untraceable online and no information is available with the postal department regarding such postal references as per RTI reply letter from postal office dated **21-05-2022** bearing Letter No. **RTI/SKGPO/2022-23/Bashir Ahmad Sofi***

3. *Our explanations regarding source of cash deposits have not been considered by the Ld. Commissioner of Income Tax (Appeals) in para 5.3.1 of the Order U/S 250 of Income Tax Act, 1961. Where documentary evidence in the form of bank statements itself reveals that the appellant had retirement benefits and pin savings which has also been noted and bifurcated by the Ld. Commissioner of Income Tax (Appeals) in Para 5.3.2 of the Order U/S 250 of Income Tax Act, 1961.*
4. *The Ld. Commissioner of Income Tax (Appeals) in Para 5.3.2 of the Order U/S 250 of Income Tax Act, 1961 is of the opinion that it is not plausible/logical on part of the appellant to confine/keep/hold the timely withdrawn cash with him for several months or even years. However, the Worthy ITAT Bench Bengaluru has affirmed the appellant's submission relevant to holding of withdrawn money and considered it plausible and justifiable, in the case of:*

“Col. Rajan Sharma 894, Jalvayu Towers NGEF Layout Sadananda Nagar Bengaluru 560038

Vs.

**The Income Tax Officer Ward- 3(3)(4) Bengaluru
Income Tax Appellate Tribunal “SMC” “B” BENCH, BENGALURU “**

The gist of the matter is that the Ld. Commissioner of Income Tax (Appeals) also, has not considered any of our submissions and reported case laws & has upheld the original assessment u/s 144.

PRAYER

In the premises, it is therefore prayed, that in light of the above mentioned grounds and referred case laws, the Hon'ble bench may decide the above mentioned case on merits. Besides this, the very huge and high pitched demand imposed on the appellant may kindly be deleted and the impugned assessment order may kindly be dismissed, same would be in the interest of justice."

3. At the outset, the Ld. Counsel submitted that ITA No. 37/Asr/2023 is a duplicate appeal filed in compliance to deficiency letter issued by the registry, although a separate compliance has been made to deficiency letter issued in ITA No. 208/Asr/2022 and accordingly, deficiencies were stands removed. Therefore, he requested to withdraw the duplicate appeal registered as ITA No. 37/Asr/2023 in the case of the same appellant assessee. The Ld. DR has no objection. Accordingly, the appeal in ITA No. 37/Asr/2023 in the case of the appellant stands dismissed as withdrawn.

4. At the outset, the appellant challenged the order of revenue authorities that the AO and the Ld. CIT(A)/National Faceless Appeal Centre [Delhi] is not justified being passed ex-parte qua the appellant in violation of principles of natural justice as no reasonable opportunity of being heard has been granted to the assessee. He contended that during the Assessment proceedings the appellant never received the notices, even the notice u/s 142(1) claimed to be sent through email for calling return of

income from the appellant within 30 days as mentioned in the impugned Assessment order. As a matter of fact, the appellant does not had any email id on the said date (proof/evidence annexed for email opening date). He contended that all the notices mentioned in the assessment order had been sent on wrong address and over and above, at that time, the whole Jammu and Kashmir was under strict curfew u/s 144 of Cr. PC being post abrogation of Article 370 and 35A of the Indian Constitution.

5. The Counsel argued that the A.O in strangulation of principal of natural justice and without ascertaining the facts has treated the whole amount of cash deposit as income from business of the appellant while as the appellant is a pensioner/senior citizen and applied a flat rate of 8% on remaining amount which is bad in law. He explained that the cash deposits made by the appellant during the year under consideration are out of savings made during the life time services in the Jammu and Kashmir bank Ltd. The cash so deposited was timely withdrawn by the appellant in order to meet medical emergencies/treatments because of the fact that the appellant is an aged person and he alone resides with his aged ailing dependent sister and also for the purpose to acquire some property in family settlement but the same couldn't mature due to death of one of the brothers of the appellant and at the same time the central government

suddenly proclaimed cash demonetization and consequently the appellant was left with no alternative but to deposit back the withdrawn cash in his accounts.

6. Per contra, the Ld. DR although supported the impugned order, however, he has no objection to the request of the appellant in view of principles of natural justice.

7. Heard rival contentions, perused the material on record, impugned order, and written submission of the appellant. Admittedly, the lower authorities have passed orders *ex parte qua* the assessee in violation of principles of natural justice, as no reasonable opportunity of being heard has been granted to the assessee in absence of service of notices as mentioned in the impugned order. The Ld. AR placed reliance on the decision of ITAT, Amritsar Bench, Amritsar in the case of Sh. Manjit Singh vs. ITO, Ward 3(2), Amritsar in ITA No: 44/Asr/2022, order dated 17/11/2022 relating to AY 2017-18. (APB, Pgs.6-15). Accordingly, he pleaded that since, revenue authorities have violated the principles of natural justice, therefore, this case may be set aside and restored back to the file of the Assessing Officer in the interest of natural justice.

Furthermore, he undertakes to fully assist the department and to fully cooperate in the matter of assessment proceedings.

8. The Hon'ble ITAT Amritsar Bench in the case of Sh. Manjit Singh v. Income Tax Officer in ITA No. 44/Asr/2022 dated 17.11.2022 vide para 8, 9 & 10 has held as under:

"8. We have carefully considered the submission of both the sides, assessment order, impugned order and material placed on record. Admittedly, there is an addition of an amount of Rs.35,04,500/- towards cash deposits in bank account maintained with Punjab National Bank in Bank of India in a staggered manner from 18th Nov., 2016 to 29th Nov., 2016 by the authorities below in ex parte proceedings qua the assessee. It is seen that aggrieved with the ex parte assessment order, the assessee preferred an appeal before the Learned CIT(A), NFAC Delhi who too decided this appeal ex-parte without appreciating the facts and merits of the case as per the contentions raised by the appellant before us.

9. From the Impugned order, it is evident that the CIT(A) while passing the order has only reproduced the grounds of appeal raised by the assessee and the assessment order while dismissing the appeal of the assessee in limini without deciding the case on merits. We hold that the impugned order passed by the CIT(A) is a non-speaking being passed without application of mind to the issues raised in the grounds of appeal.

10. In view of the principles of natural Justice and considering the factual matrix of the case, we are of the considered view, that the appellant assessee should get an opportunity to explain and substantiate the nature cash deposits in the alleged bank account with the support of material evidence relevant for the

year under consideration. Accordingly, we consider it deem fit to restore back the matter back to the file of the Ld. AO to pass de novo assessment after considering the written submission and evidences filed on record before him during the appellate proceedings, and to be filed in fresh proceedings after granting sufficient opportunity of being heard to the assessee. No doubt, the assessee shall cooperate in the fresh proceedings.”

9. On parity of facts, following coordinate bench decision in the case of “Sh. Manjit Singh v. Income Tax Officer”, (Supra) we consider it deem fit to restore back the matter back to the file of the Ld. AO to pass de novo assessment order after considering the written submission and evidences filed on record and may be filed before him during the fresh proceedings after granting sufficient opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee in I.T.A. No. 208 & 37/Asr/2022 is allowed for statistical purpose and in I.T.A. No. 37/Asr/ 2023 is dismissed as withdrawn.

Order pronounced in the open court on 28.04.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr./P.S.

Copy of the order forwarded to:

(1)The Appellant

- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order