

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR (SMC)**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

I.T.A. No. 323 (Asr)/2016

Assessment Year: 2007-08

Late Sh. Jaswant Singh
Through L/H Sh. Harpreet
Singh Prop. M/s Sajjan Singh
Jaswant Singh Tarn Tarn
Road, Amritsar.
PAN: AKSPS0892C

Vs. I.T.O.
Ward-3 (2),
Amritsar.

(Appellant)

(Respondent)

Appellant by: Sh. Harpreet Singh
Respondent by: Sh. Rahul Dhawan, (D. R.)

Date of hearing: 19.04.2017
Date of pronouncement: 16.05.2017

ORDER

PER DIVA SINGH, JM :

The present appeal has been filed by the assessee assailing the correctness of the order dated 29.02.2016 of CIT (A)-1 Amritsar, pertaining to Asst. Year 2007-08 on various grounds wherein the ex-parte order is assailed as having been decided without hearing the assessee. The record shows that the assessee who is stated to be running rice shellers declared an income of Rs 10,570/-. Said return was picked up for scrutiny in view of the fact that the assessee was found to have accepted unsecured loan in the name of Harpreet Singh amounting to Rs. 4,95,000/-. The assessee was found to have failed to prove genuineness and capacity of the creditors despite opportunity leading to the additions being made by an order passed u/s 144 by the Assessing Officer.

2. The assessee came in appeal before the CIT (A) who dismissed the appeal of the assessee holding that in view of the following facts the assessee is not serious in pursuing the appeal filed.

SI	Notice dt.	Fixation dt	Mode of Service	Remarks narrating fate
1.	05.11.2014	17.11.2014	Speed Post	Remained uncomplied & unattended, as neither anybody attended nor any written reply filed.
2.	31.12.2015	12.01.2016	Speed Post	Remained uncomplied & unattended, as neither anybody attended nor any

				written reply filed
3.	13.01.2016	22.01.2016	Speed Post	Assessee seek adjournment and the case was adjourned for 06.02.2016
4.		06.02.2016		Remained uncomplined & unattended, as neither anybody attended nor any written reply filed

3. Aggrieved the assessee is in appeal before the ITAT. The impugned order has been assailed on the following grounds by the assessee:

"1. That appeal of the assessee was fixed for hearing for 22/01/2016 But this was got adjourned to 05/02/2016.

2. On 05/02/2016, the appellant along with his counsel attended the office Of CIT(A) but were told by the Admn. Officer of CIT (A), that CIT(A) was away to Delhi and would return on 08/02/2016. He^told the appellant to contact — some official of CIT(A) office.

3. The appellant along with his counsel contacted the official (Mr.Sikander) In the Office of CIT (A) and were told by him as well, that CIT(A) was away to Delhi and would-return on 08/02/2016. The official asked for written submissions which were to be filed in the case and these written submissions were given to the said official, who told the appellant that the same would be duly considered.

4. But on 29/02/2016, the CIT(A) dismissed the appellant's appeal holding that no body attended on 05/02/2016, though the CIT(A), himself was away to Delhi on 05/02/2016 and the appellant had attended on 5/02/2016 and had also filed his written submissions which the official did not put up before him.

5. The CIT(A) has erred in dismissing the appellant's appeal on the ground that the Appellant did not attend his office on 05/02/2016 though the appellant had attended his office on 05/02/2016 and had also Submitted his written submissions, which have not been considered by the CIT(A) while dismissing the appeal though he himself was not at Amritsar on 05/02/2015.

7. It is therefore prayed that the submissions of the appellant made before the CIT(A) dated 05/02/2016, including confirmation of credit be considered and addition made by the Assessing Officer be deleted or in the alternative, order of CIT(A) dated 29/02/2016 be set aside and he be directed to pass a fresh order after considering the appellant's submissions filed on 05/02/2016.

8. Any other ground that may be taken up during the course of hearing of Appeal".

4. In support of the allowability of the claim, following facts set out in the statement of facts were relied upon :-

"It is submitted, that Sh. Jaswant Singh, Prop: of the firm died in August 2006. "Thereafter bank account of the firm was freezed and the firm was closed. All the assets of the firm including stocks, machinery, land etc, were disposed off to clear the bank overdraft/loans etc. The case of the assessee for the Assessment year 2007-08 was fixed by the A.O in 2009, and at that time, its Legal Heir Sh. Harpreet Singh was behind bars due to some family dispute and hence could not attend the assessment proceedings before the Assessing Officer. As it was a time barring assessment, so the A.O. framed ex-parte assessment and while framing assessment added credit of Rs. 495000/- in the name of Harpreet Singh, without allowing any opportunity to the assessee. More over, as the L/H was behind bars at that time, so he could not appear before the A.O. and could not explain his case.

2. But it is submitted that Sh. Harpreet Singh had advanced Rs. 495000/- to the firm by cheques, during the accounting year relevant to the assessment year 2007-08. Confirmation of the same could not be filed before the Assessing

Officer during the course of assessment proceedings as the appellant was in jail at that time. However the same is being enclosed which was also filed by him with the CIT(A) on 05/02./2016, which has not been considered

3. *So an appeal against the said order of the A.O. was filed on 28/01/2010 before the CIT(A) and at that time the appellant was still behind bars and the appeal papers were signed by him while he was still in jail.*

4. *As per CIT(A) order, notice fixing the case was issued on 05/11/2014. But as the assessee had died, so the business of the assessee was closed, long back, so no such notice was ever received by the appellant. Notice dated 31/12/2015 was received much after the date fixed for hearing i.e. 12/01/2016. Notice dated 13/01/2016 was received fixing the case for 22/01/2016 in response to which appellant' counsel attended the CIT(A) office on 20/01/2016 and requested for adjournment, and the case was adjourned to 05/02/2016.*

5. *On 05/02/2016, the appellant along with his counsel attended the office Of CIT(A) but were told by the Admn. Officer of CIT (A), that CiT(A) was away to Delhi and would return on 08/02/2016. He told the appellant to contact some official of CIT(A) office.*

6. *The appellant along with his counsel contacted the official (Mr.Sikander) In the Office of CIT (A) and were told by him as well, that CIT(A) was away to Delhi and would return on 08/02/2016. The official asked for written submissions which were to be filed in the case and these written submissions were given to the said official, who told the appellant that the same would be duly considered.*

7. *But on 29/02/2016; the CIT(A) dismissed the appellant's appeal holding that no body attended on 05/02/2016, though the CIT(A), himself was away to Delhi on 05/02/2016 and the appellant had attended on 5/02/2016 and had also filed his written submissions.*

8. *The CIT(A) has erred in dismissing the appellant's appeal on the ground that the Appellant did not attend his office on 05/02/2016 though the appellant had attended his office on 05/02/2016 and had also Submitted his written submissions, which have not been considered by the CIT(A) while dismissing the appeal though he himself was not at Amritsar on 05/02/2015.*

9. *It is therefore prayed that the submissions of the appellant made before the CIT(A) dated 05/02/2016, including confirmation of credit be considered and addition made by the Assessing Officer be deleted or in the alternative, order of CIT(A) dated 29/02/2016 be set aside and he be directed to pass a fresh order after considering the appellant's submissions filed on 05/02/2016”.*

5. At the time of hearing, the legal heir of the assessee Shri. Harpreet Singh who has infact filed the appeal before the CIT (Appeals) as well as the ITAT was present in person. Reliance was placed upon the assertions made in the grounds and statement of the facts placed on record. On the basis of the same he requested for a remand to the CIT (A) stating that the issues had been decided without hearing the assessee. On query he gave his oral undertaking stating that in case remand is directed, he would not abuse the opportunity and would participate fully and fairly before the ld. CIT (Appeals).

6. The Ld. Senior DR though placed reliance upon the impugned order, however, had no objections if the issues are restored back to the CIT (A) for adjudicating on merits.

7. I have heard the rival submission and perused the material available on record. I find that in the peculiar facts and circumstances of the case without getting into the question of whether the Ld. CIT(A) was available on the said date or not, the impugned order even otherwise cannot be upheld. A perusal of the same shows that it is not an order which can be said to be in conformity with the statutory provisions as set out in Sub Section(6) of Section 250 of the Income Act, 1961. The aforesaid provision not only mandates that the Commissioner(Appeals) while exercising his Appellate powers is required to pass an order which shall be in writing and shall state the points for determination of the decision thereon it also mandates that the Ld. CIT(A) shall give his conclusion backed by reasons arriving at the conclusion. The said exercise is found to be missing. Accordingly, accepting the oral undertaking given by the assessee present in person, the impugned order is set aside. While so directing, it is made clear that it is hoped that the opportunity so provided to the assessee in good faith is utilized by participating fully and fairly before the CIT (A) and is not abused. In the eventuality of abuse, it is made clear that the Ld. CIT(A) would be at liberty to pass a speaking order in accordance with law on the basis of material available on record. Said order was pronounced in the open Court on the date of hearing itself.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16th May 2017

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

/GP/Sr.PS/AG(CHD)

Copy of the order forwarded to:

1. The Assessee:
2. The ACIT,
3. The CIT(A),
4. The CIT,
5. The SR DR, I.T.A.T.,

True copy

By order