

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'B' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & SMT. ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No. 924/CHD/2019

निर्धारण वर्ष / Assessment Years : 2010-11

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| Smt. Monika, W/o Shri Vijay Singh, Village - Mehna Khera, Tehsil, Distt. Sirsa. | बनाम VS | The ITO, Ward-3, Sirsa. |
| स्थायी लेखा सं./PAN No: CZHPM7889P | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

&

आयकर अपील सं./ ITA No. 925/CHD/2019

निर्धारण वर्ष / Assessment Years : 2010-11

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| Smt. Urmila Devi W/o Shri Rajbir, Village - Arnianwali, Distt. Sirsa. | बनाम VS | The ITO, Ward-3, Sirsa. |
| स्थायी लेखा सं./PAN No: AFHPU0369L | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Lalit Mohan, C.A.

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 06.07.2021

उद्घोषणा की तारीख/Date of Pronouncement : 09.07.2021

Hearing conducted via Webex

आदेश/ORDER

PER BENCH

In both these appeals the respective assesses challenge the ex-parte orders passed by the CIT, Hissar pertaining to

2010-11 assessment years dated 29th March 2019 and 21st February 2019 respectively. It was a common stand of the parties before the Bench that since the facts, circumstances and submissions in the respective cases remain identical, accordingly, the submissions advanced in ITA-925/CHD/2019 would address the submissions advanced in ITA-924/CHD/2019.

2. In the said background the ld.AR drew attention to the Ground 2 raised by the assessee in the present appeals. The said Ground is reproduced from ITA 925/CHD/2019 as under :

“2. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in disposing off the appeal ex-parte without granting any fair opportunity of being heard to the appellant.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that there was reasonable cause for the appellant for not causing appearance on the dates fixed for hearing and as such disposal of the appeal without granting fair, meaningful and proper opportunity is untenable

2.2 That even otherwise, an order passed in limini without effectively disposing of the grounds raised by the appellant is in infraction of Section 250(6) of the Act and as such, order so made is otherwise too illegal, invalid and a vitiated order.”

3. Inviting attention to the impugned order the ld.AR submitted that the CIT(A) has passed an ex-parte order relying upon the decision of the ITAT in the case of **CIT versus Multiplan 38 ITD (Del) 320** amongst others and has dismissed the appeal of the assessee in limini. It was his submission that the said order is not in accordance with the statutory mandate

as set out in section 250 [6] of the Act. Accordingly, it was his prayer that the impugned order may be set aside so as to afford the assessee an opportunity of being heard.

4. The Ld.AR was required to address the various opportunities provided to the assessee as set out in para 5 of the impugned order and explain why they had not been availed of. In reply it was submitted by him that the assessee having appointed a C.A. to represent her, remained confident that all that is required to be done was being done. It was elaborated that the assessee being a housewife remained confident that she was being represented before the said authority by her C.A.

5. Facts and arguments remain identical in both the appeals. Hence, in the circumstances it was his limited prayer that the appeals may be remanded back accepting his oral undertaking that the assesses shall participate in the proceedings.

6. The said request on a perusal of the record was not opposed by the Ld DR.

7. We have heard the submissions and perused the material available on record. On a perusal of the record it is seen that the order passed by the ld. CIT(A) is not in accordance with law as the appeals of the respective assesses have been dismissed

in limine and not by way of a speaking order as is the statutory requirement, hence, the orders are unsustainable in law. It is even otherwise seen that as far as the respective assesseees are concerned, that after having appointed C.A. Mr Ashok Singhal whose submissions have been noticed by the CIT(A) in para 3 of the order, the belief that the assesseees shall be represented is well founded. Accordingly, in order to address this statutory deficit in the order and in the interests of substantial justice, it is deemed appropriate to set aside the impugned order back to the First Appellate Authority. The assessee in its own interests is directed to ensure full and fair participation before the said Authority as failing which it is made clear that the CIT(A) shall be at liberty to pass an order in accordance with law.

8. Since in ITA 924/CHD/2019 there is no distinction on facts, circumstances and submissions. The impugned order, accordingly is identically set aside as being unsustainable in law since it is not in conformity with the requirements of sub-section (6) of Section 250 of the Income Tax Act, 1961 and even otherwise, the assessee having appointed a counsel cannot be faulted for lack of proper representation before the said Authority. Thus, in the interests of justice in the light of the

order as set out in ITA 925/CHD/2019, the impugned order herein is also set aside back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law. The assessee in its own interests is directed to ensure full and proper representation before the said Authority failing which, it is made clear that the CIT(A) shall be at liberty to pass an order on the basis of material available on record. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

9. In the result, appeals of the assesseees are allowed for statistical purposes.

Order pronounced on 9th July,2021.

Sd/-

(अन्नपूर्णा गुप्ता)

(ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

“पूज्य”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant –
2. प्रत्यर्थी/ The Respondent –
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar