**आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "एकल सदस्यीय', चण्डीगढ़**
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**
**BENCH 'SMC' CHANDIGARH**

**श्रीमती दिवा सिंह, न्यायिक सदस्य**
**BEFORE: SMT. DIVA SINGH, JM**

आयकर अपील सं./ITA No. 1089/CHD/2019
निर्धारण वर्ष / Assessment Year : 2015-16

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|---|---|---|
| Shri Amrik Singh Bhullar,<br>S/o Shri Mukhtiar Singh,<br>St. No. 2, Mehal Mubarak Colony,<br>Sangrur. | बनाम<br>VS | The ITO,<br>Ward,<br>Sangrur. |
| स्थायी लेखा सं./PAN No: AHPPB9630D | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : None (Adjournment application of Shri Sanket Singla, Advocate)
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 04.03.2021
उदघोषणा की तारीख/Date of Pronouncement : 29.04.2021

**Hearing conducted via Webex**

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 14.05.2019 of CIT(A), Patiala pertaining to 2015-16 assessment year is assailed on various grounds including ground No. 1, 2 and 7 which read as under :

*1. That the order of the Worthy CIT(A) in so far is against the appellant, is bad in law against the facts and circumstances of the case, Principles of Natural Justice, Equity and all other known Principles of Law.*

*2. That the Worthy CIT(A) is not justified in rejecting the rectification application filed by the appellant that the same is not a mistake apparent from the record.*

*3. xxx*

*4. xxx*

*5. xxx*

*6. xxx*

*7. That the worthy A.O has failed to appreciate the facts that the order passed by the Worthy Assessing officer, Sangrur is barred by limitation as the appellant filed an application for rectification on 01-12-2017 through e-portal which was transferred to the concerned A.O. on 05-12-2017 which was to be decided within six months as per section 154(8) but the order was passed on 09-11-2018 i.e. after expiry of 6 months."*

2. By the remaining grounds, the assessee assails the issue on merits.

3. At the time of hearing, an adjournment application was moved on behalf of the assessee. None was present in support thereof. However, considering the record, the ld. Sr.DR addressing the aforesaid grounds was required to point out from the order whether the assessee can be said to have been heard before the passing of the order as violation of principles of natural justice have been pleaded by the assessee-appellant.

4. The ld. Sr.DR referred to written submissions of the assessee extracted in para 4.5 of the impugned order. Referring to these, it was submitted that the assessee appears to have been heard as submissions extracted can be said to have been considered as possibly that was the only argument of the assessee. Accordingly, it was her submission that the assessee for all intents and purposes can be said to have been heard.

5. A perusal of the record shows that in the facts of the present case the assessee returned an income of Rs. 1,24,800/- from the 'business and profession' and in the year under consideration declared a total income of Rs. 18,91,963/- after

deductions under Chapter VI-A. Total tax and interest of Rs. 3,83,065/- was paid. The said return was processed u/s 143(1) of the Income Tax Act,10961 on 09.05.2017 and regular demand of Rs. 3,45,500/- was raised after charging of interest u/s 234A, 234B and 234C as due date for filing of return for the year under consideration was 07.09.2015. Thereafter, the assessee filed an application u/s 154 seeking rectification stating that in the Financial Year, the assessee had received an amount of Rs. 27,73,603/- ( including interest amount of Rs. 3,14,385/-) on account of compulsory acquisition of land by the Government. A prayer for rectification was made relying upon Circular issued by CBDT to put in assessee's words, it was submitted*: the Circular of CBDT along with original ITR and computation for the A.Y. 2015-16 as well as rectified computation of income and proof of payment for compensation made by the District Magistrate (SDM)-cum-Land Acquisition Collector, Sangrur for consideration and necessary action. The specific compensation received by the assessee as available in the order passed u/s 154 of the Act was shown to be as under :*

> *"During the year under consideration, the assessee had received compensation for compulsory acquisition of his Agriculture and Commercial Land as under:-*

| Sr. No. | Certificate's No. & Date | Nature of Land | Date of Receipt of compensation | Total Compensation (Rs.) | TDS Deducted (Rs.) | Net Compensation received (Rs.) |
|---|---|---|---|---|---|---|
| 1. | 401 09.02.2016 | Agriculture | 10.02.2015 | 4,21,173/- | | 2,68,676/- |
| 2. | 401 09.02.2016 | Commercial | 10.02.2015 | 21,07,686/- 2,44,744/- | 2,10,769/- 24,474/- | 18,96,917/- 2,20,270/- |

Note:- *As per certificate from the* O/o *the Collector Land Aqquisition-cum-S.D.M. Sangrur, the said Agriculture and Commertial Land had been acquired by the Land Acquisition Officer for Road No.NH-64 and vide the Notification No.S.O.42/C.A.2/1899/S.9/2/2008 Dated 09.02.2008 of the Punjab Govt., the amount equilent to this Award of compensation for purchase of land will be exempted from Stamp Duty and Registration Charges.*

5.1 Accordingly, the following rectification in the order vis-à-vis the original computation was prayed for :

| Sr. No. | Particulars | Original ITR & Computation | Rectified Computation |
|---|---|---|---|
| **1.** | Assessment Year | 2015-16 | 2015-16 |
| **2.** | | **Original (filed on 23-03-2017)** | **No Revised Return filed by the assessee.** |
| **3.** | Income from Business and Profession | Rs. 1,24,800/- | Rs. 1,24,800/- |
| **4.** | **Income from Capital gain LTCG** | **Rs.18,91,963/-** | - |
| **5.** | Income from other sources | Rs.1,81,488/- | Rs.7,415/- |
| **6.** | Gross Total Income | Rs.20,16,763/- | Rs. 1,32,220/- |
| **7.** | Deductions(Chapter VI-A) | Rs. 1,24,800/- | - |
| **8.** | **Net Total Income** | **Rs.18,91,963/-** | Rs. 1,32,220/- |

5.2 However, the said request and prayer did not find favour with the AO who held that the assessee intends his case to be decided as per the particulars which were not shown in the return of income.

6. The assessee carried the issue in appeal before the First Appellate Authority where the written submissions extracted in the order also did not find favour with the First Appellate Authority.

7. In the said background, the assessee has invoked the principles of natural justice and equity.

7.1. The record has been considered. Since the grievance appeared maintainable, accordingly, rejecting the adjournment application, the ld. Sr.DR was heard. The appeal, accordingly is

being decided ex-parte qua the assessee appellant on merits wherein the ld. DR relied on the order.

8. For the sake of completeness, it need be noted that in the appeal, the assessee further challenged the order passed u/s 154 on merits as well as on the maintainability of the order itself. The order passed was also assailed on the grounds of limitation and consequent jurisdiction.

9. A perusal of the impugned order shows that the jurisdictional challenge wherein submissions of the assessee have been extracted has been addressed in paras 3 to 4 at pages 1 to 6 of the order and rejection of the same are set out in para 5 at page 6 and 7. Thereafter, the decision on merits has been taken. The discussion on merits is being refrained from as it would come into play only if the decision on jurisdiction is upheld. The relevant finding of the AO is reproduced hereunder :

> *"3. Further, perusal of the rectification application filed u/s 154 shows that it has not -i signed by the assessee but by Sh. Parveen Bansal, Advocate. Section 154(2)(b) of Income Tax Act, 1961 provides that the authority concerned shall make such amendment for rectifying any such mistake which has been brought to its notice "by the assessee ". In the present case, the assessee himself has not brought any mistake to the notice of the Assessing Officer. A representative can represent the assessee but he cannot substitute the assessee for all intent and purpose. Since, it is an admitted fact that the assessee himself has not filed a rectification application u/s 154, rectification application filed by Sh. Parveen Bansal, Advocate or the representative of the assessee in the present ease is incompetent and therefore non-est in the eyes of law. The said rectification application filed u/s 154 is liable to be rejected for this reason also.*
>
> *(Support taken from the Case Law: (Smt. Jangir Kaur, Ambala City vs Assessee in the Income Tax Appellate Tribunal: 'A' Bench: Chandigarh before Shri H.L.Karwa, VP and Shri D.K. Srivastava, AM in IT A No. 908/ Chd/2011, Assessment Year 2007-08 Dated 26-12-2011.)"*

9.1 On a consideration of the record and in the light of the aforementioned grounds which have been extracted, it is evident that the assessee had challenged the order passed upholding the jurisdiction of the AO despite the alleged violation of the statutory time line etc. In the facts of the present case, it can be seen that the order passed u/s 154 was to be passed on or before 30.06.2018 and as per record, has been passed on 09.11.2019. The relevant facts available on record in regard thereto are that the rectification application was filed on 01.12.2017 through e-portal. This was transferred to the concerned AO on 05.12.2017 and the order was passed by the AO on 09.11.2018 i.e. after the expiry of six months. The relevant provision setting down the limitation of 6 months under whose shelter the challenge is posed is sub-section (8) of Section 154 which mandated that the AO was bound to pass an order within six months from the end of the month, date on which the application is received by the AO. The provision under discussion is reproduced for the sake of completeness :

> *"154(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee [30][or by the deductor] on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—*
>
> *(a) making the amendment; or*
>
> *(b) refusing to allow the claim.]*

9.2. Instruction 01/2016 issued by the CBDT clarifying/amplifying the provisions had also been relied upon which as per submission recorded in the impugned order were clarified as under:

> *"Sub-section (8) of section 154 of the Income-tax Act, 1961 (Act) stipulates that where an application for amendment is made by assessee/deductor/collector with a view to rectify any mistake apparent from record, the income-tax authority concerned shall pass an order, within a period of six months from the end of the month in which such an application is received, by either making the amendment or refusing to allow the claim. It has been brought to the notice of the Board that the said time-limit of six months has not been observed in deciding some applications. In such cases, the field authorities often take a view that since no action was taken within the prescribed time-frame, the application of the taxpayer is deemed to have lapsed, thereby not requiring any action.*
>
> *2. The matter has been examined by the Board. In this regard, the undersigned is directed to convey that the aforesaid time-limit of six months is to be strictly followed by the Assessing Officer while disposing applications filed by the assessee/deductor/collector under section 154 of the Act. The supervisory officers should monitor the adherence of prescribed time limit and suitable administrative action may be initiated in cases where failure to adhere to the prescribed time frame is noticed. "*

9.3. In the Rectification Application, it had been stated that the assessee had by mistake included the amount received in its computation of taxable income in ignorance of the fact that it was a non taxable event. It was claimed that he had also wrongly paid tax thereon. For supporting the argument that the amount was not taxable on which tax had been paid inadvertently reliance was placed on CBDT circular No. 36/2016 dated 25.10.2016 which according to the assessee extended the exemption by including compulsorily acquired land without any restriction on area as well as classification of land. The claim had been made under the Right to Fair

Compensation and Transparency in Land Acquisition, Re-habilitation and Re-settlement Act 2013 (RFCTLARR) which, it was claimed was made applicable from January, 2014. **The assessee claimed to have inadvertently by mistake treated the amounts so received as a taxable event and sought rectification.**

9.4 In the said background challenge is posed on the grounds that the rectification order wrongly treated the application as not maintainable on the ground that it was filed by the counsel whereas it had been filed by the assessee. The assessee in the detailed note extracted in pages 3 to 6 has put forth the claim that the mistake was brought to the notice of the AO on the instruction of the assessee by the counsel who only acted after the rectification application u/s 154 was filed electronically by the assessee. It has been assailed that ***A.O. can't reject the claim simply because the appellant had shown it taxable in the return of income and there is no estoppel against the assessee to claim exemption.***

9.5 **The assessee has further assailed the action relying upon Article 265 of the Constitution of India pleading that tax can be levied only under the express provision of law and not on account of ignorance or mistake of the assessee.**

9.6 Similarly challenge is also posed on the ground that the AO is not justified to dismiss assessee's claim holding ***that the***

***appellant wants to make a fresh claim on the basis of fresh material as the A.O. has failed to make distinction between a fresh claim and revised claim.*** It has been argued that no fresh claim on the basis of any fresh material has been made. **The claim is made on the grounds that the tax has been paid on the basis of wrong interpretations of the provisions of the law.**

9.7 Considering these arguments, the CIT(A) came to the following conclusion :

> *"05.* Ground of Appeal No. 1 & 2 *: in disposing of the rectification application, the Ld. AR mentions that the rectification application has been filed by the Counsel to the Appellant in his own signature and without Vakalatnama on 14.05.2018 while the appellant in the above grounds of appeal argues that the appellant himself had through his own user name and password had actually filed an application for rectification on 01-12-2017 through e-filing portal vide acknowledgment no. 322201290011217 which was transferred to the A.O. on 05-12-2017 and which was to be decided within six months as per section 154(8) but the order was passed on 09-11-2018. As per the* Central Board of Direct Taxes' Instruction No. 3 /2013 dated 05-07-2013 *(vide F.No. 225/76/2013/UA.II):-*
>
> • *There is facility to file the Application meant for Rectification of Mistake either* (a)*to submit online, or* (b) *to submit by post or in person.*
> • *If the Applications u/s 154 is submitted by post or in person, the same should be received, diarized and acknowledgment number should be given to the applicant by the receiving Officer immediately at the time of filing the application.*
> • *On receipt of such* "Rectification Application" *the same has to be compulsorily uploaded in* "Online Rectification Register" *by the Officer on the day of application is received by him, even when such application is received in his own office directly or by post.*
> *In either way, obtaining the Acknowledgement Number is a basic entitlement of the applicant while submitting the application u/s 154 by the Officer.*
>
> *The Ld. AR argues that the rectification application had been disposed of in belated fashion and the order rejecting the application is* ***non-est.*** *The Ld AO in his order u/s 154 makes no reference to the e-filed rectification application.*

*I have examined the submission of the Ld AR, the findings of the Ld. AO and contextualized these to these grounds of appeal. That the appellant filed a rectification application online 01-12-2017 through his account on the e-filing portal http//www.incometaxindiaefiling.gov.in vide acknowledgment no. 322201290011217 is a matter of record. That this application was transferred to the A.O. on 05-12-2017 is also verifiable from record. It is my considered view that the rectification application duly e-filed was not disposed of within the statutory time limit and that the application referred to by the AO is a manual application filed later by the Counsel for the appellant which has been disposed of in the impugned order.-The manual application signed by the Counsel, is in itself not regular unless it is by way of a reminder with regards to the online application filed. That the substantive issue is dealt with in the remaining grounds of appeal makes the objections raised in these grounds academic. The appellant succeeds in part on these grounds of appeal.*

10. In the light of the above different set of reasoning, the issues raised are being decided under the following sub-issues:

i) Limitation

ii) What would constitute record ? and

iii) Can written submissions without a conscious waiver be treated as waive of Right to be heard ?

11. **LIMITATION**

11.1 Addressing the first of the above issues, it is eminently clear that the conclusion that the Rectification application duly e-filed was not disposed of within the statutory time limit remains unaddressed. Similarly, the reasoning that the application referred to by the AO is a manual application filed later by the Counsel for the appellant cannot be considered to be the original application filed through **e-portal appears to be a case of heads you loose and tails also you loose.** The submission afforded as an argument cannot be substituted for the original application to the prejudice of

the assessee. If there were deficiencies, in the e-filing of the application, these should have been notified to the assessee for correcting the defect. **The tax authorities cannot be seen to violate the Statutory time lines at their whims and fancies.** The disposal of the appeal in this manner cannot be upheld.

11.2 Similarly the reasoning that, " *The manual application signed by the Counsel, is in itself not regular unless it is by way of a reminder with regards to the online application filed"* also does not address the issues at hand. The issue remains open since it is unclear was it treated as a reminder or a substitution. Moreover, the fundamental challenge that the action was beyond the stipulated timeline remains unaddressed. **At the cost of repetition, in case there were any deficiencies in the rectification application filed by the assessee, then the defect should have been notified and opportunity to correct the same should have been provided.** The assessee cannot be subsequently burdened on account of lapses etc. which were never pointed out. The primary issue which thus, remains for consideration is can the rectification order be said to have been passed within the statutory timeline. On the facts as available on record, it appears that the answer is no. However, since the issue has been

deflected/obfuscated, it is remanded back for consideration afresh.

## 12. **WHAT WOULD CONSTITUTE 'RECORD'**

12.1 In case the assessee does not succeed on the primary issue, the order again is open to the challenge on the grounds as **to what would constitute the record for a case of rectification like this wherein the return is e-filed.**

12.2 The record in a case where returns are e-filed, to my understanding, would not only constitute what is permitted to be e-filed on the e-portal but would also necessarily constitute all the facts and evidences taken into consideration for filing the necessary columns in the e-portal. This would include the orders and documents passed/made available by various other connected authorities as in the facts of the present case, the Land Acquisition Officer. Without getting into the aspect that it is only just and due taxes for the State which ought to be collected, it goes without saying that the **limitations of documents only filed on e-portal cannot operate against the citizen taxpayers.** The systems set in place for robust tax collection cannot be so used as to deprive the tax paying citizens from getting a fair hearing and seek a proper adjudication on disputed facts. Such an action would be wholly unjustified. The systems and e-portals are still in the process of being fine tuned

and still in the process of being perfected. **They cannot be presumed to be so sacrosanct and final and thus beyond critical scrutiny.** For the purposes of the present proceedings, I will confine myself to holding that **every statutory order/decision and relevant facts which went into the decision making of punching the figures on e-portal at the relevant point of time would constitute the record for the purposes of proceedings u/s 154.** All bonafide mistakes of ignorance of facts; misinterpretation and incorrect understanding of relevant statutory provisions etc. applicable at that specific point of time would be covered under this umbrella. The axioms that the mistake is rectifiable only which is patently evident on the face of the record ofcourse remains inviolate what has been elaborated is what would constitute the record.

13. **WRITTEN SUBMISSIONS BE TREATED AS A WAIVER OF RIGHT TO BE HEARD**

13.1 Confining myself only to the principles of natural justice which have been invoked. I am of the view that the answer posed to the above question is a 'no'. Right to be heard forms the bed rock of the principles of natural justice. The word natural justice is derived from the Roman word " *Jus naturale*" hich presupposes principles of natural law including justice, equity, fair play and good conscience. Fair play pre supposes fair notice of charge, and place of hearing, opportunity of

effective hearing to address the charge and speaking order addressing the reasons for agreeing or disagreeing with the claims put forth. *Audi alterem partem* which is one of the foundational and fundamental bed rocks of natural justice means that no one should be condemned un heard. Though these Rules are not necessarily codified, however, these have evolved over the years and are expected to be adhered to not only when statutory provisions so provide but have also been impliedly read into and necessarily required to be adhered to also in quasi administrative decisions whereby the rights / interests of the party are adversely effected. **In such circumstances, fair play and Rule of law necessitates that the procedure required to be adhered necessarily envisages a right to be heard.**

13.2 In the facts of the present case, it is seen that written submissions had been advanced. It is seen that the submissions were considered but did not find favour with the First Appellate Authority as the order u/s 154 stood confirmed. From the body of the order, it is not evident whether the assessee was confronted with the fact that its written submissions were not sufficient for relief prayed for and that the assessee was given an opportunity of being heard thereafter.

13.3 It is trite law that in the eventuality, written submissions of the assessee were found to be insufficient for granting relief and were considered to be not relevant, then the assessee should in all fairness be necessarily confronted with the fact that its claim was not allowable and be given due notice thereof. The purpose being that if the assessee still has something further to say, the opportunity of so saying should have been provided. The arbitrary presumption that the assessee shall have nothing to state cannot be upheld. **The due process of law envisages an opportunity of fair representation.** It is evident from the impugned order assailing which specific ground invoking principles of natural justice has been taken ***that the right to be heard was not waived off by the assessee by mere making available of the written submissions to the First Appellate Authority.*** No doubt a party may choose to waive the right to be heard and instead choose to rely only on written submissions. However, it is the duty of the adjudicating authorities to ensure that ***the waiver so made is intelligently made and with full knowledge and understanding i.e; with the foreknowledge that the right to be heard 'exists.*** The record is silent on this aspect. In the facts of the present case there is nothing on record to show that the right to be heard was consciously and knowingly waived.

13.4 Accordingly, in view thereof, the order cannot be upheld and deserves to be set aside.

14. Thus, for the various reasons set out hereinabove in detail, the impugned order is set aside *in toto* and restored back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law first on the maintainability of the order itself after giving the assessee a reasonable opportunity of being heard. In case the assessee does not succeed the other issues challenged shall become live on which too, the ld. Commissioner shall pass a speaking order in accordance with law. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

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

Order pronounced on 29TH April,2021.

Sd/-
**(दिवा सिंह)**
**(DIVA SINGH)**
**न्यायिक सदस्य/Judicial Member**

**"पूनम"**
आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :
1. अपीलार्थी/ The Appellant 2.प्रत्यर्थी/ The Respondent 3.आयकर आयुक्त/ CIT4.आयकर आयुक्त (अपील)/ The CIT(A)5.विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6.गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar