

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**ITA No.269 of 2015 (O&M)**

**Date of decision: 20.11.2015**

Ramesh Chand

...Appellant

Commissioner of Income Tax, Patiala and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

**HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Aman Bansal, Advocate for the petitioner.

Mr. Zora Singh Klar, Advocate for the respondents.

**Ajay Kumar Mittal,J.**

**CM No.15983-CII-2015**

1. Delay of 110 days in filing the present appeal is condoned.

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2. This appeal has been preferred by the appellant under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.9.2014, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh in ITA No.1063/Chd/2013 for the assessment year 2005-06, claiming following substantial questions of law:-

“i) Whether in the facts and circumstances of the present case, the learned authorities have erred in considering the most material fact that no opportunity of hearing was given to the appellant and hence violation of principles of natural justice?

ii) Whether in the facts and circumstances of the case, the learned authorities below erred in acting only on the basis of assumptions and presumptions and after ignoring the well reasoned material/evidence which was brought on record by the appellant/assessee?

iii) Whether in the facts and circumstances of the case, the action of the authorities below - the impugned orders are legally sustainable in the eyes of law?”

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee was running the business of food grains at Nabha. He had suffered heavy loss in the business as he used to give advance amount to the agriculturists and others to obtain agricultural proceeds from them to earn commission and also interest in some cases. Most of the persons to whom advances were given had refused to repay. As such, the appellant had to clear the liability by raising loan at higher rate of interest. The situation worsened in April-May 2007 when the creditors forced the appellant to make the payment. Some of them had threatened him with dire consequences due to which he had to run from Nabha by leaving behind the assets and business there. As the appellant was unable to pay to the creditors, he filed a petition in the Civil Court at Nabha under the Provisional Insolvency Act, 1920 with the prayer that he be declared insolvent and the accounts be settled between creditors and debtors. For the assessment year 2005-06, the appellant filed return of income on 21.9.2005 declaring total income of ₹ 1,83,917/- and agricultural income of ₹ 10,000/- which was processed under Section 143

(1) of the Act on 29.12.2005. On account of threat by the creditors, the appellant had to leave Nabha. Thus, no notice of hearing or assessment order could be served upon him. Consequently, the assessment order was passed on 24.12.2007 assessing taxable income of the assessee at ₹ 12,03,770/- besides agricultural income of ₹ 10,000/- alongwith interest and penalty. Aggrieved by the order, the appellant filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 25.10.2013, Annexure A.2, the appeal was dismissed. The appellant filed appeal before the Tribunal which was also dismissed vide order dated 30.9.2014, Annexure A.3. Hence the instant writ petition.

4. Reply has been filed on behalf of respondent No.2 by Income Tax Officer, Nabha wherein it has been inter alia stated that the department tried to serve all the notices at the given address of the appellant but the appellant was not available at the said address. Finally the last notice had to be served through affixation at the last known address in the presence of two witnesses of the same locality. Thus, proper procedure regarding service of notice was followed. On these premises, prayer for dismissal of the appeal has been made.

5. We have heard learned counsel for the parties.

6. It has been categorically recorded by the Tribunal in its order dated 30.9.2014 that notice under section 143(2) of the Act was served on the assessee on 31.7.2006. The assessee did not appear. He left the premises without giving further address to the department. Thereafter, for further proceedings before the Assessing officer, notices were served through affixture at the last known address in the presence of two witnesses of the same locality. Still the appellant did not appear. Ex parte assessment order

and demand notice were also affixed on the last known address. The appeal preferred before the CIT(A) was held to be time barred. The relevant findings recorded by the Tribunal read thus:-

“3. We have heard the learned representatives of both the parties and perused the findings of the authorities below. It is not disputed that notice under section 143(2) dated 24.7.2006 was served on the assessee on 31.7.2006. Thereafter there was no compliance on the part of the assessee and the assessee left the premises without giving further address to the revenue department. Therefore notice was served through affixture for further proceedings before the Assessing Officer and according to the report of the notice server it was the last known address and the proceedings were attended by two eye witnesses. The Assessing Officer also reported that ex parte assessment order and demand notice were also affixed at the last known address of the assessee. This fact would clearly reveal that the assessee despite service of the earlier notice did not appear before the Assessing Officer and for the remaining notices the same were served through affixture as per law and assessment order was also served upon the assessee through affixture in the presence of two witnesses. The Hon’ble Punjab and Haryana High Court in the case of VRA Cotton Mills P. Limited vs. Union of India and others, (359 ITR 495 (SC)) held that the notice which was served by affixture on the last date of limitation was valid. This fact on record clearly proves that notices were served upon the assessee and the assessment order was also served upon the assessee through affixture. Therefore, the appeal preferred before the learned CIT(Appeals) was clearly time barred and no reasonable cause has been explained for filing the appeal belatedly before the learned CIT(Appeals). The learned CIT (Appeals) was thereafter, justified in holding the appeal to be time barred and dismissed the same. The learned counsel for the assessee further submitted that even if notice was served by affixture, no sufficient time has been given to the assessee to

represent the case before the Assessing Officer because only two days time was left after affixture of the notice on 24.11.2007 for proceedings before the Assessing Officer on 26.11.2007. However the assessee has not explained as to why the assessee did not make any effort before the Assessing Officer to represent the case for filing the appeal on time before the learned CIT(Appeals). No material is produced before us to substantiate any contention raised before us. We therefore, do not find any merit in this appeal of the assessee. No other ground on merit has been raised because the appeal was dismissed by the learned CIT(Appeals) holding the appeal time barred.”

7. The view adopted by the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. Learned counsel for the appellant has not been able to show any illegality or perversity in the impugned order. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**November 20, 2015**  
**‘gs’**

**(Ramendra Jain)**  
**Judge**