

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 6575/Del/2019
Asstt. Year 2011-12

Bipin Jain, C-2/2226, Vasant Kunj, New Delhi-110 070 PAN AELPJ5333A (Appellant)	Vs.	ITP Ward-33(3) New Delhi. (Respondent)
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Assessee by :	Shri Anil Jain, Advocate
Department by:	Shri R.K. Gupta, Sr. DR
Date of Hearing	02/03/2021
Date of pronouncement	02/03/2021

ORDER

PER R.K. PANDA, AM

This appeal filed by the assessee is directed against the ex-parte order dated 13th June 2019 of the Ld. CIT(A)-11, New Delhi relating to assessment year 2011-12. The assessee in his various grounds of appeal has challenged the order of the Ld. CIT(A) in dismissing the appeal for want of prosecution.

2. Facts of the case, in brief, are that the assessee is an individual. On the basis of individual transaction statement retrieved from ITD that the assessee has made investment in bonds/debentures amounting to Rs. 5 lacs during the financial year 2010-11 and that assessee has not filed his return of income for the assessment year 2011-12, the AO, after recording reasons for reopening of the assessment issued notice u/s 148 of the Act on 24th March 2018. Subsequently statutory notices u/s 142(1) of the Act was also issued to the assessee on 7th August, 2018 and 2.11.2018. However, there was non compliance from the side of the assessee in response to the notice u/s 148 as well as to the notices issued u/s 142 (1) of the Act. Subsequently, the assessee vide letter dated 14th December, 2018 stated that the PAN quoted by the AO does not relate to him and his PAN is different and that he is continuously filing his return of income from assessment years 2010-11 to 2018-19. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that the PAN AELPJ5353A pertains to the assessee since a perusal of ITD system data shows that the name of the assessee and date of birth is same in both the PANs i.e the above PAN as well as PAN No. AAFPJ6246A. Since there was no compliance from the side of

the assessee regarding the source of investment of Rs. 5 lacs, the AO treated the same as undisclosed income of the assessee u/s 69 of the I.T. Act and made the addition of the same to the total income of the assessee in the order passed u/s 144/147 of the Income Tax Act 1961.

3. Since there was no compliance from the side of the assessee the Ld. CIT(A), following the decision of Hon'ble Supreme Court in the case of CIT vs. BN Bhattacharya (1997) 118 ITR 461 (SC), the decision of the Tribunal in the case of CIT vs. Multiplan India Pvt. Ltd. reported in 38 ITD 320 (Delhi) and the decision of Hon'ble Gujarat High Court in the case of PCIT vs. Ashokji Chanduji Thakor in ITA No. 710/2018 dismissed the appeal filed by the assessee for want of prosecution.

4. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

4.1 Ld. Counsel for the assessee submitted that the notice so issued by the office of the Ld. CIT(A) was never received by the assessee. Further the Ld. CIT(A) has not considered the facts of the case enclosed with the appeal and has also not decided the appeal on merit. He accordingly submitted that in the interest of

justice the assessee should be granted one opportunity to substantiate his case.

5. Ld. DR on the other hand, strongly supported the order of the Ld. CIT(A) and submitted that the assessee was non cooperative before the AO as well as Ld. CIT(A) and, therefore, heavy cost should be levied on the assessee for such non appearance before the lower authorities.

6. We have considered the rival arguments made by both the sides and perused the orders of the AO and Ld. CIT(A). We find the AO in the instant case completed the assessment u/s 147/144 of the I.T. Act, 1961 determining the total income of the assessee at Rs. 5 lacs since the assessee could not explain the source of investment in bonds/debentures amounting to Rs. 5 lacs during the financial year 2010-11. We find the Ld. CIT(A) dismissed the appeal filed by the assessee for want of prosecution. It is the submission of the Ld. Counsel for the assessee that no notice of hearing was received by the assessee and that the Ld. CIT(A) has not decided the appeal on merit and, therefore, the assessee should be given one opportunity to substantiate his case. As per the provision of section 250(6) of the Income Tax Act, 1961 the order of the Ld. CIT(A) disposing of the

appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision. However, in the instant case, the Ld. CIT(A) has not decided the appeal on merit and has simply dismissed the same for want of prosecution which is not in accordance with law. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Ld. CIT(A) with the direction to grant one final opportunity to the assessee to substantiate his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the Ld. CIT(A) and substantiate his case failing which Ld. CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the Open Court at the time hearing i.e. on 2nd March, 2021.

sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 02/03/2021

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi