

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC-2 : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.8630/Del/2019  
Assessment Year: 2011-12

Abdul Nasir,  
7900, Gali Haji Mehboob Wali,  
Mohalla Shaikhan,  
Sadar Bazar (Nai Basti,  
Bara Hindu Rao),  
Delhi.

Vs ITO,  
Ward-63(2),  
New Delhi.

PAN: ABXPN8345B

(Appellant)

(Respondent)

Assessee by	:	None
Revenue by	:	Shri Vijay Kumar Kataria, Sr. DR
Date of Hearing	:	28.07.2021
Date of Pronouncement	:	28.07.2021

ORDER

This appeal filed by the assessee is directed against the ex parte order dated 30<sup>th</sup> August, 2019 of the CIT(A)-20, New Delhi, relating to assessment year 2011-12.

2. None appeared on behalf of the assessee despite issue of notice through RPAD. Therefore, this appeal is being decided on the basis of the material available on record and after hearing the ld. DR.

3. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the CIT(A) in confirming an addition of Rs.18,22,800/- made by the AO to the total income of the assessee.

4. Facts of the case, in brief, are that the assessee is an individual. On the basis of the information received that the assessee has made cash deposit of more than Rs.10 lakhs and has not filed his return of income for the impugned assessment year, the AO initiated proceedings u/s 147 of the Act by recording reasons and notice u/s 148 of the Act was issued on 27<sup>th</sup> March, 2018. There was no compliance from the side of the assessee to the notice issued u/s 148 or to the notice issued u/s 142(1) thereafter. The AO, therefore, invoking the provisions of section 144, determined the total income of the assessee at Rs.18,24,800/- being the unexplained cash deposit in the bank account. Since the assessee did not appear before the CIT(A) despite number of opportunities granted, the Id.CIT(A), following the decision of the Honøble Supreme Court in the case of CIT vs. B.N. B.N. Bhattacharjee & Anr., 118 ITR 461 (SC); the decision of the Honøble Madhya Pradesh High Court in the case Estate of late Tukojirao Holkar vs. CWT, 223 ITR 480 (M.P.); and the decision of the Honøble Delhi High Court in the case Commissioner of Income-tax vs. Multiplan India (P.) Ltd, 38 ITD 320 (Del.), dismissed the appeal filed by the assessee for non-prosecution.

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

6. I have heard the ld. DR and perused the orders of the AO and the CIT(A). It is an admitted fact that due to non-compliance to the notice issued u/s 148/142(1), the AO completed the assessment u/s 147/144 of the Act determining the total income of the assessee at Rs.18,22,800/-. Since the assessee did not appear before the CIT(A) despite number of opportunities granted, the ld.CIT(A) in the ex parte order passed by him, dismissed the appeal filed by the assessee for want of prosecution. It is also an admitted fact that the ld.CIT(A) has not decided the appeal on merit which he is required to do as per the provisions of section 250(6). As per the provisions of section 250(6), the order of the 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 issue on merit. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a 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 CIT(A) and substantiate his case without seeking any adjournment under any pretext, failing which the ld.CIT(A) is at liberty to pass appropriate order as per law. I 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.

Pronounced in the open court at the time of hearing itself, i.e., on  
28.07.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 28<sup>th</sup> July, 2021

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi