

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE,
SMT. DIVA SINGH, JUDICIAL MEMBER**

**I.T.A No.1959/Del/2020
(ASSESSMENT YEAR: 2010-11)**

**I.T.A No.1960/Del/2020
(ASSESSMENT YEAR: 2011-12)**

Sh. Rakesh Divedi 87, Triveni Housing Society, Pitampura, New Delhi-110 034 PAN-APCPD 9179A (Appellant)	Vs.	Income Tax Officer, Ward-40(3), New Delhi (Respondent)
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Appellant By	None
Respondent by	Sh. R. K. Gupta, Sr. DR
Date of Hearing	16.08.2021
Date of Pronouncement	17.08.2021

Hearing conducted via Webex

ORDER

Both these appeals have been filed by the assessee wherein the correctness of the separate orders dated 13.03.2020 of CIT(A)-14, New Delhi pertaining to 2010-11 & 2011-12 assessment years are assailed on various grounds.

2. At the time of hearing, no one was present on behalf of the assessee. The appeal was passed over. In the next round also the assessee remained unrepresented. However, considering the record in the context of ground No.2(i)(ii) raised by the assessee in the respective appeals which is identical,

it was deemed appropriate to proceed with the appeals *ex-parte* qua the assessee appellant on merits after hearing the Ld. SR. DR.

3. For the sake of completeness the respective ground is being reproduced from ITA No.1959/Del/2020.

“2. (i) *On the facts and circumstances of the case, Ld. CIT(A) has erred both on facts and in law in passing the order, without giving appellant a proper and adequate opportunity of being heard, in violation of principle of natural justice.*

(ii) *That the CIT(A) has erred both on facts and in law in passing the order without giving any findings in the merits of the case.”*

4. A perusal of the impugned orders show that various opportunities were given to the assessee for representing his case, however, the assessee merely sent adjournment applications and in effect no effective representation was made. Considering the various opportunities given the Ld. CIT(A) was of the view that the assessee is not interested in effectively pursuing the appeals filed and guided by the principle as set out by the Apex Court in *CIT vs. B.N. Bhattacharya [1997] 118 ITR 461(SC)* and Delhi Tribunal in *CIT vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi)* dismissed the appeals of the assessee.

5. Aggrieved by this assessee is in appeal before the ITAT on various grounds. Apart from the lack of opportunity etc. the assessee has also challenged the assumptions of jurisdiction which was a ground raised before the CIT(A) also as Ground Nos. 2 to 7. These have remained undecided.

6. The Ld. Sr. DR relying upon the impugned order submitted that the assessee has been given sufficient opportunity before the Assessing Officer and has failed to substantiate the source of credit entries in his bank account, as a result of which the impugned addition of Rs.25,86,560/- and Rs.36,15,053/- was made in the respective years. Since, the assessee has failed to avail of the opportunities before the Ld. CIT(A), the additions sustained it was his prayer may be confirmed.

7. I have heard the submissions and perused the material available on record. In the facts of the present case, it is seen that additions made by the Assessing Officer were challenged in appeal by the assessee in both the years. On a perusal of the impugned order it is seen that the assessee was represented by Sh. S.K. Singhal, C.A who repeatedly sought time on the various dates on which the hearing was fixed as recorded in pages 2 & 3 of the impugned order. However, he failed to make any submissions whatsoever on behalf of the assessee. In the said factual back ground it is clear that the assessee was not effectively represented before the First Appellate Authority. Accordingly, in the interests of substantial justice, it is deemed appropriate to set aside the impugned orders back to the file of the CIT(A) with the direction to pass a speaking order in accordance with law. Needless to say that the opportunity so provided to the assessee in good faith, it is hope is used fairly and fully and the trust reposed is not abused. It is made clear that in the eventually of abusing the trust repose, the ld. CIT(A) would be at liberty to pass

an order on the basis of material available on record and in accordance with law. Said order was pronounced at the time of virtual hearing itself in the presence of the parties Webex.

8. In the result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced on 17th August, 2021.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated: 17/08/2021

PK/Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI