

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

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

**ITA No.7755/DEL/2019
[Assessment Year: 2016-17]**

Shiv Kumar Yadav, KD-32A, Phase-1, Ashok Vihar, Delhi-110052	ITO, Ward-34(3), Pratyaksh Kar Bhawan, Civic Centre, New Delhi-110001
PAN-ABNPY6088N	
Assessee	Revenue

Assessee by	Sh. Ravi Gupta, CA
Revenue by	Sh. Ramesh Kumar, Sr. DR

Date of Hearing	23.08.2021
Date of Pronouncement	23.08.2021

ORDER

This appeal filed by the assessee is directed against the ex-parte order dated 27.06.2019 of the learned CIT(A)-12, New Delhi, relating to Assessment Year 2016-17.

2. This is the second round of litigation before the Tribunal. The Tribunal vide order dated 06.11.2018 in ITA No.3386/Del/2018 has restored the issue to the file of the learned CIT(A) for deciding the issue afresh and in accordance with law.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31.03.2018

declaring total income of Rs.4,48,500/-. The AO completed the assessment u/s 144 of the I.T. Act, 1961 and determined the total income of the assessee at Rs.14,52,280/-, wherein, he made addition of Rs.9,42,000/- being unexplained cash deposit in the bank account. The assessee filed the appeal before the learned CIT(A) and the learned CIT(A) in his ex-parte order sustained the additions made by the AO. Aggrieved with such order of the learned CIT(A), the assessee filed an appeal before the Tribunal and the Tribunal vide ITA No.3386/Del/2018, order dated 06.11.2018 restored the issue to the file of the learned CIT(A) for adjudication afresh after allowing proper opportunity of hearing in accordance with law.

4. During the set-aside proceedings before the learned CIT(A) despite three opportunities granted by the learned CIT(A), there was no compliance from the side of the assessee for which he again dismissed the appeal filed by the assessee.

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

6. The learned counsel for the assessee submitted that due to non-receipt of notice issued by the learned CIT(A), there was non-appearance before the learned CIT(A). He submitted

that as per the allegation of the learned CIT(A), he has issued two notices on 10.06.2019 and 20.06.2019 at a gap of just 10 days. However, these notices were not received by the assessee. Further, the notice has not been issued through e-filing portal electronically. He submitted that the assessee also met with an accident and was severely ill and was confined to bed due to fracture in his leg since 17.06.2019 onwards. He accordingly submitted that in the interest of justice one last opportunity should be granted to the assessee.

7. The learned DR on the other hand strongly opposed the submissions made by the assessee. He submitted that the assessee has scant regard to the statutory notices issued by the learned CIT(A), therefore, the order of the learned CIT(A) should be upheld.

8. I have heard the rival arguments made by both the sides and perused the records. It is an admitted fact that on both occasions, the learned CIT(A) has passed ex-parte orders due to non-appearance of the assessee. It is the submission of the learned counsel for the assessee that due non-receipt of notice from the office of the learned CIT(A), the assessee could not appear before him. It is also his submission that due to fracture of leg, the assessee was under bed rest and was not in a

position to move, for which the case also remained unrepresented before the learned CIT(A). Considering the totality of facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the learned CIT(A) with a direction to grant one last 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 learned CIT(A) without seeking any adjournment under any pretext failing which the learned 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.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Above decision was pronounced in the open court at the time of hearing itself i.e. on 23.08.2021.

Sd/-

**[R.K.PANDA]
ACCOUNTANT MEMBER**

Delhi; Dated: 23/08/2021.

Shekhar, Sr. P.S

Copy forwarded to:

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

5. DR

Asst. Registrar,
ITAT, New Delhi