

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC-1 : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7784/Del/2019
Assessment Year: 2008-09

Sujeet Kumar Mishra,
436 (Basement), Jangpura,
Mathura Road,
New Delhi.

Vs. ITO,
Ward-61(3),
New Delhi.

PAN: AITPM2677A

(Appellant)

(Respondent)

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| Assessee by | : | Shri Sujeet Kumar Mishra, Assessee |
| Revenue by | : | Shri Om Prakash, Sr.DR |
| Date of Hearing | : | 03.11.2021 |
| Date of Pronouncement | : | 03.11.2021 |

ORDER

This appeal filed by the assessee is directed against the order dated 31st May, 2019 of the CIT(A)-38, New Delhi, relating to Assessment Year 2008-09.

2. 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.10,80,000/- made by the AO on account of cash deposit in the bank account under the head -undisclosed sources.ø

3. Facts of the case, in brief, are that the assessee is an individual and derives income from profession and income from other sources. During the course of original assessment proceedings, the AO noticed that the assessee has deposited cash of Rs.10,80,000/- in his savings bank account maintained with Axis Bank. The AO called for the source of the same which the assessee could not file and sought adjournment and AO completed the assessment u/s 144 by making an addition of Rs.10.80 lac. The Id. CIT(A) confirmed the addition again due to non-appearance and the matter reached before ITAT. The case was set aside by the ITAT by its order No.5872/Del/2013 dated 18th May, 2016 and remitted the matter to the file of AO for deciding the issue afresh, as per law, after allowing a reasonable opportunity of being heard to the assessee. The ITAT set aside the case on the plea of the assessee that the assessment order was passed u/s 144 of the Act, without granting adequate opportunity to the assessee to present his case and same position prevailed in so far as the appellate proceedings are concerned.

4. During the course of set aside proceedings, the AO, on perusal of Bank statement with Axis Bank found that there are only nine credit entries and assessee has deposited Rs.10.80 cash covers four entries out of nine. Therefore it was evident that he is not regularly depositing his professional income in his bank account. In order to provide the proper opportunity for submitting the source of the said cash deposits notice u/s 143(2), 142(1) dated 31.07.2017 were issued for 11.08.2017. On 11.08.2017 none attended. On 20.09.2017 again notice u/s 142(1)

giving details to be filed by the assessee was issued for 26.09.2017, on 26.09.2017 none attended. On 09.10.2017 the AR of the assessee appeared and filed copy of acknowledgement issued by Shri Nirmal Ch. Sadhukhan Showing receipt of cash of Rs.8.0 lakhs paid by the assessee to one Shri Subroto authorized by him to accept on his behalf in cash. He also filed undertaking of Nirmai Ch. Sadhukhan who had deposited cash in the account of assessee at Howarah, WB.

5. To verify the genuineness of transaction, creditworthy and identity of the depositor summons U/ s 131 dated 31.10.2017 of the income tax Act was issued in the name of Sh. Nimai Ch Sadhukhan for personal deposition on 10.11.2017. He was requested to submit proof of identification, proof of ITR for A.Y. 2008-09, Computation of Income, statement of affairs, Balance sheet, evidence reflecting source of payment made to Sh. Sujeet Kumar Mishra and payment received from Surjeet Kumar Mishra and copy of bank statement for the F.Y. 2007-08. No one attended. Further the AR of the assessee vide note sheet entry dated 10.11.2017 was asked to produce Sh. Niamai Ch Sadhukhan on 17.11.2017. On 17.11.2017. Neither any reply was filed nor any adjournment was taken. Show cause notice dated 17.11.2017 was issued. AR of the assessee attended the proceedings on 15.12.2017 and filed Affidavit on behalf of Sh. Nemaï Sadhukhan. On perusal of the affidavit the AO observed that Sh. Nemaï Sadhukhan was in Delhi on 14th December 2017, on the date of hearing but he

did not attend the proceedings u/s 131. The above act of the person not only weakened the proceedings but also kept him away from natural justice.

6. In view of the above and observing that the assessee completely failed to produce any evidence despite several opportunities given to him regarding the cash deposit in the bank account, the AO made addition of Rs.10,80,000/- to the total income of the assessee. Since the assessee did not appear before the CIT(A) despite number of opportunities granted, the Id.CIT(A) upheld the addition made by the AO.

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

8. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that despite number of opportunities granted by the CIT(A), the assessee did not appear before her for which the Id.CIT(A) was constrained to pass the ex parte order sustaining the addition made by the AO. It is the submission of the Id. Counsel that in the interest of justice the assessee should be given one last opportunity to substantiate his case. 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 directed to appear before the CIT(A) and substantiate its case without seeking any adjournment under any pretext failing

which, the Id.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 purposes.

Order pronounced in the open court at the time of hearing itself, i.e., on 03.11.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 03rd November, 2021.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi