

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT 'SMC' BENCH, VARANASI**

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.50/VNS/2020
Assessment Year: 2010-11**

Mohd Mobin, S/o Abdul Majid, Rasulpur, Mohammadabad Gohna, Mau PAN-AKEPM8423M	v.	Income Tax Officer Ward, Mau
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Mr. A.K. Singh, Sr. D.R.
Date of hearing:	22.03.2022
Date of pronouncement:	22.03.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 9.12.2019 of CIT(A), Gorakhpur for the assessment year 2010-11. The assessee has raised the following grounds:-

BECAUSE;

"1. the impugned order dated 9.12.2019 passed by the CIT(A) is bad in law as the same has been passed without giving due and effective opportunity of being heard to the appellant.

2. the alleged notices mentioned in the appellate order had not been served upon the appellant accordingly the impugned order passed by the CIT(A) is bad in law.

WITHOUT PREJUDICE TO THE AFORESAID

3. proceeding under section 147 of the Act is wholly erroneous as the appellant was not served with the reasons recorded for initiation of such proceedings after he had duly filed the return in compliance to the notice issued under section 148 of the Act.

4. the CIT(A) has grossly erred in law and on facts in confirming the view of the Assessing Officer who had treated the entire deposits in the bank account of the appellant maintained with UBI, Mohammadabad Gohna as unexplained income under section 68 of the Act, though the same are business receipts and income derived from the business having been disclosed by the appellant stands accepted too.

5. there are receipts as well as withdrawals made by the appellant at regular intervals, authorities below have erred in law and on facts in adding / confirming the deposits made by the appellant at regular intervals out of business receipts as unexplained income under section 68 of the Act.
6. the order passed by the "CIT(A)" is violation of principles of natural justice.
7. the order appealed against is contrary to the facts, law applicable thereto and principles of natural justice."

2. None has appeared on behalf of the assessee when this appeal was called for hearing despite the fact that notices were issued to the assessee. On perusal of the record, it is noticed that the assessment order was passed under section 144 r.w.s. 148 of the Income Tax Act, whereby the Assessing Officer has made addition on account of cash deposit in the bank account. The assessee challenged the assessment order by filing the appeal before the CIT(A). The CIT(A) issued various notices to the assessee but none appeared before the CIT(A) and consequently the appeal of the assessee was dismissed for non prosecution. Therefore, the Tribunal proposes to hear and dispose of this appeal *ex parte*.

3. I have heard the learned DR and carefully perused the impugned order of the CIT(A). The CIT(A) dismissed the appeal of the assessee in limine for prosecution in para 4 to 6 as under:-

"In appellate proceedings several opportunities were allowed to the appellant. Notices were issued to the appellant fixing the appeal for hearing as per provisions of section 250 of the I.T. Act, 1961. There was no compliance on part of the appellant till date. The details of opportunities provided to the appellant in the case are tabulated as under:-

<i>Date of Notices issued</i>	<i>Date of hearing fixed</i>	<i>Remarks</i>
<i>03.06.2019</i>	<i>11.06.2019</i>	<i>None attended</i>
<i>28.06.2019</i>	<i>09.07.2019</i>	<i>None attended</i>
<i>29.07.2019</i>	<i>14.08.2019</i>	<i>None attended</i>
<i>18.09.2019</i>	<i>10.10.2019</i>	<i>None attended</i>
<i>14.11.2019</i>	<i>21.12.2019</i>	<i>None attended</i>
<i>02.12.2019</i>	<i>05.12.2019</i>	<i>None attended</i>

The aforesaid non-compliance on part of appellant reveals beyond doubt that the appellant has nothing to say in the matter of this appeal. It can be concluded that

appellant is not interest in prosecution of the present appeal and same is liable to be dismissed on this ground itself. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in well known dictum "VIGILANTIBUS, NON DORMENTIBUS, JURA SUBVENIUNT". In view of the above mentioned facts and by placing reliance on decision of Hon'ble ITAT, Delhi Bench in case of CIT vs. Multiplan India Ltd., reported in 38 ITD 320 and decision of Hon'ble M.P. High Court in case of Estate of Late Tukoji Rao Holkar vs. CWT (1977) reported in 223 ITR 480 the present appeal to be dismissed.

The CIT(A) has cited various notices issued to the assessee however, it appears that several notices were issued just less than one week prior to the date of hearing and hence the possibility of not delivered to the assessee before the date of hearing cannot be ruled out. Further, the CIT(A) has not decided the appeal of the assessee on merits as mandated under the provisions of section 250 of the Income Tax Act and therefore, the impugned order of the CIT(A) is not sustainable in law. Accordingly, in the facts and circumstances of the case and in the interest of justice, the impugned order of the CIT(A) is set aside and matter is remanded to the record of the CIT(A) for deciding the same afresh on merits for a speaking order after giving one more opportunity of hearing to the assessee.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court after conclusion of hearing on 22.03.2022.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 22/03/2022

Varanasi

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Copy forwarded to:

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

By order

ITA No. 50/VNS/2020
Mohd Mobin

Assistant Registrar