

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

**Before Sh. Saktijit Dey, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 1666/Del/2020 : Asstt. Year : 2011-12**

Ramesh Kumar, Plot 67-68, FF, Pocket-S, Sec.-22, Rohini, New Delhi-110085	Vs	Income Tax Officer, Ward-37(1), New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AKZPK6751D</b>		

**Assessee by : None**

**Revenue by : Sh. Shankar Gupta, Sr. DR**

**Date of Hearing: 07.07.2022**

**Date of Pronouncement: 13.07.2022**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order of Id. CIT(A), Delhi-13, dated 25.02.2020.

2. On going through the grounds, we find that the assessee has not filed any return of income or made any mandatory compliance to the notice issued u/s 148 of the Income Tax Act, 1961. Hence, the ground of the assessee that the assessment be treated as annulled as no notice u/s 143(2) of the Act has been issued by the Revenue is without any legal basis and being dismissed herewith.

3. On going through the record, we find that the Id. CIT(A) has summarily confirmed the order of the Assessing Officer and dismissed the appeal of the assessee without adjudicating the issue on merits. Hence, the case is being remanded back to the file of the Id. CIT(A) to adjudicate the issue on merits of the

issue by passing a speaking order. The department would be at liberty to initiate proceedings in accordance with the provisions of Income Tax Act for non-compliance to the notices, if any.

4. From the para 4 of the Assessment Order, we find that notice u/s 133(6) was issued to ICICI Bank Ltd., New Delhi on 14.09.2018, requisitioning the copy of the bank statement in respect of the assessee. However, the AO held that there has been no compliance by the bank to the statutory notice issued. Another notice u/s 133(6) has been issued to ICICI Bank Mumbai on 20.11.2018. The AO further observed that no reply has been received to that notice also and went ahead to make the addition even in the absence of legitimate bank statement.

5. It is the duty and responsibility of the Assessing Officer to invoke relevant provisions of the Income Tax Act to enforce compliance from the bank. Ignoring the non-compliance to the statutory notices issued by the authorities would perpetuate and lay down a habit of cavalier attitude on the part of the recipient of the notices which should neither be encouraged nor be ignored and needs to be curtailed. We have observed, in umpteen number of cases, the Assessing Officer makes addition in routine manner by falling back on the argument that summons/notice issued u/s 131/133(6) remained un-complied. The statute vests enough power with the Assessing Officer to take follow up action, in case, summons/notice issued remain un-complied. Section 131 of the Act empowers the Assessing Officer to exercise powers as vested in a Court under the code of Civil Procedure, 1908, when trying a suit. That besides, Section 272A(1)(c) empowers the Assessing Officer to impose penalty for not complying with summons issued u/s 131 of the Act. Similarly, in case of non-compliance with notice issued u/s

133(6) of the Act, the Assessing Officer can impose penalty u/s 272A(2)(c) of the Act. Thus, as could be seen, the Assessing Officer has sufficient plenary powers to ensure compliance to summons/notice issued u/s 131/133(6) of the Act. Without resorting to the legally available statutory provisions enshrined in the Act to be invoked against the default in compliance to the notices already issued by the department, the AO cannot put himself in a feeble position to enforce the compliance to the notices. In spite of the availability of sufficient enforcement provisions, the Assessing Officers, keeping themselves in a pliable position and then shifting the onus on the assessee to prove goes against the fundamentals of taxation. The adage that when the allegation is made by the department then the onus is on the department to prove the amount is taxable and then onus shifts on the assessee to prove the amount is not taxable is infallible. However, we have seldom come across a case where the Assessing Officer exercises such power to enforce compliance and straight away resorting to the addition of the disputed amounts to the returned income. The Revenue Officers ought to conclude the proceedings initiated in a logical and legally acceptable manner invoking the relevant provisions of the Income Tax Act.

6. In the result, the appeal of the assessee is allowed for statistical purpose.

Order Pronounced in the Open Court on 13/07/2022.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 13/07/2022**

\*Subodh Kumar, Sr. PS\*