

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7098/DEL/2019
Assessment Year 2012-13

Shashi Gupta, E-14/4C, Vasant Vihar, New Delhi.	v.	ITO, Ward-49(4) New Delhi.
TAN/PAN: AFEPG6511M		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Abhishek Kumar, Sr.D.R.		
Date of hearing:	21	06	2022
Date of pronouncement:	02	08	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-XVII, New Delhi [‘CIT(A)’ in short], dated 12.06.2019 arising from the assessment order dated 31.12.2018 passed by the Assessing Officer (AO) under Section 153A/153C of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per its grounds of appeal, the assessee has challenged the addition of Rs.41,081/- allegedly towards undisclosed sources.

3. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter is proceeded *ex-parte*.

4. On perusal of the order of the CIT(A), we straightaway notice that the CIT(A) has dismissed the appeal before it for want of prosecution and nonattendance. It is further noticed that only two opportunities were given to the assessee in this regard. The CIT(A) has not disposed of the appeal on merit but has dismissed the appeal on account of non prosecution.

5. We straightway refer to Section 250(6) of the Act which enjoins that the CIT(A) shall state the points for determination before it and the decision shall be rendered on such points alongwith reasons for the decision. Thus, it is incumbent upon the CIT(A) to deal with the grounds on merits even in ex parte order. In view of Section 250(6) of the Act, the CIT(A) has no power to dismiss an appeal on account of non-prosecution. This view is also taken by the Hon'ble Bombay High Court in case of CIT vs. Premkumar Arjundas Luthra HUF (2017) 291 CTR 614 (Bom.). A bare glance of the order of the CIT(A) shows that CIT(A) has not addressed itself on the various points placed for its determination at all and dismissed the appeal of assessee for default in nonappearance. Needless to say, the CIT(A) plays role of both adjudicating authority as well as appellate authority. Thus, the CIT(A) could not have shunned the appeal for non-compliance without addressing the issue on merits.

6. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in the larger interest of justice with a view to enable the assessee to avail proper opportunity for disposal of appeal by the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without any demur, failing which, the

CIT(A) shall at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) appealed against, is set aside and all the issues raised in the impugned appeal are restored back to the file of the CIT(A) for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

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

Order was pronounced in the open Court on 02/08/2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: **02/08/2022**

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**