

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

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1646/Del/2022
[Assessment Year: 2017-18]**

Sudesh Sachdeva, B-194, Fruit Market, Azadpur, Delhi-110033. PAN- ABLPS5027M	<u>Vs</u>	ACIT, Circle-15, New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	Sh. Parnav Yadav, Adv.	
Department represented by	Sh. H.K. Choudhary, CIT(DR)	
Date of hearing	03.01.2023	
Date of pronouncement	10.01.2023	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-26, New Delhi, dated 29.06.2022, pertaining to the assessment year 2017-18. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the CIT(A) erred in passing ex-parte order.

2. *On the facts and circumstances of the case and in law, the CIT(A) erred in passing order without providing proper opportunity of being heard.*
 3. *On the facts and circumstances of the case and in law, the order passed by CIT(A) is against the principles of natural justice.*
 4. *On the facts and circumstances of the case and in law, the CIT(A) erred in not adjudicating the grounds of appeal on merit.*
 5. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is bad in law and without jurisdiction and CIT(A) erred in not holding so.*
 6. *On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition of Rs. 6,00,000/- made by the AO on account of alleged unaccounted cash u/s 68 r.w.s. 115BBE of the Act.*
 7. *On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.”*
2. Facts giving rise to the present appeal are that for the assessment year 2017-18 the assessee filed its return of income on 13.08.2017, declaring income of Rs. 6,69,550/-, which was processed u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”). Subsequently, consequent to search & survey operation conducted on TRG group, the assessee was issued notice u/s 153A of the Act on 06.08.2019. In response thereto the assessee E-filed its return declaring same income as originally filed at Rs. 6,69,550/-. The Assessing Officer while framing the assessment u/s 153A of the Act, assessed the assessee’s income at Rs. 12,69,550/- against the declared income of Rs. 6,69,550/-, by making addition of

Rs. 6,00,000/- u/s 68 of the Act on account of unaccounted cash deposited during the period of demonetization. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also confirmed the action of the Assessing Officer and dismissed the appeal of the assessee. Aggrieved against this, the assessee has preferred appeal before this Tribunal.

3. Learned counsel for the assessee submitted before us that in the instant case the Assessing Officer, while making the impugned addition, rejected the explanation furnished by the assessee that there was withdrawal from bank and other receipts out of which the cash in dispute was deposited in bank. He submitted that in appeal the learned CIT(Appeals) dismissed the assessee's appeal ex parte, without giving any reason. Learned counsel submitted that in the interest of natural justice the matter may be restored to the learned CIT(Appeals) to decide the assessee's appeal on merit after hearing the assessee.

4. The learned DR supported the orders of the authorities below.

5. We have heard rival contentions, perused the material on record and have gone through the orders of the authorities below. The learned CIT(Appeals) dismissed the assessee's appeal, ex parte, qua the assessee by, inter alia, observing as under:

“From the above details, it is apparent that the assessee has failed to avail any of the opportunities allowed to it to represent the case or file any reply. As the appellant has not availed any of the opportunities allowed to it to represent the case, I am of the opinion that the appellant is not interested in pursuing its appeal matter and has nothing to say in the matter in addition to the grounds of appeal taken by it. The maxim ‘vigilantibus non-dormientibus jura subvenunt’ i.e. “the law assist those who are vigilant and not those who

sleep over their rights” is applicable in this case. A reference is made to judgment of Hon.bte SC in the case of CIT Vs B. N. Bhattacharya and another, 118 ITR 461 wherein their lordships held that. “The appeal does not mean merely filing of the appeal but effectively pursuing it.” During the appeal proceedings no reply was filed by the assessee. Therefore/findings of the assessing officer are upheld and grounds of appeal nos. 1 to 7 are **dismissed.**”

6. Since the learned CIT(Appeals) has dismissed the assessee’s appeal without without giving any finding on merit, we, therefore, considering the totality of the facts and to subserve the principles of natural justice, set aside the impugned order and restore the issue to the file of the learned CIT(Appeals) to decide the issue on merit, suffice to say after affording adequate opportunity of hearing to the assessee. Grounds of appeal stand allowed for statistical purposes.

7. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 10th January, 2023.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

