IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA No. 1696/Del/2020
(Assessment Year : 2011-12)

Santosh 190-191, 2nd Floor, Pocket-2, Sector – 22, Rohini, New Delhi- 110085 **PAN No. DCAPS 8853 Q**	Vs.	ITO Ward – 37(1) New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri Subhash Singhal, C.A.
Revenue by	Shri B. M. Singh, Sr. D.R.

Date of hearing:	30.01.2023
Date of Pronouncement:	02.02.2023

ORDER

PER ANIL CHATURVEDI, AM :

This appeal filed by the assessee is directed against the order dated 26.02.2020 of the Commissioner of Income Tax (Appeals)-Delhi relating to Assessment Year 2011-12.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is an individual. AO has noted that as per the AIR information, assessee had deposited cash including Term Deposit aggregating to Rs.53,36,216/- in his saving bank account during the F.Y. 2010-11 relevant to A.Y. 2011-12. Thereafter, after recording reasons, Notice u/s 148 of the Act was issued on 29.03.2018 which was duly served on the assessee. Thereafter, the case was taken up for scrutiny and assessment was framed u/s 147 r.w.s 144 of the Act vide order dated 14.12.2018 and accordingly, the assessment was completed on the total income of Rs.53,36,216/-.

4. Aggrieved by the order passed by AO, assessee carried the matter before CIT(A) who vide order dated 26.02.2020 in Appeal No.CIT(A), Delhi-13/10086/2019-20 dismissed the appeal on account of non-prosecution. Aggrieved by the order of CIT(A), Assessee is now in appeal before us and has raised the following grounds:

1. *"The Ld. CIT(A) erred in passing an ex parte order by not sending notice of hearing by post or process server. In just one month, all the hearings were completed and notice by email sent which belong to the earlier CA and notices never reached the assessee. Postal address too do not belong to appellant in 2020 when the notices were sent and for want of information, none of them could be attended. Fair opportunity is prayed.*

2. *Initiation of reassessment proceedings is an important step which should be governed by strict procedure and precedents. After receipt of information, the AO himself must do some acts/deeds/investigation to arrive at his satisfaction that it is a fit case for reassessment, and this part in totally missing in this case, ITR online filed on 28.03.2012 has been taken as not filed in reasons recorded, makes the reasons without verification of facts.*

3. *Recording of reasons is not merely a formality but the AO should speak his mind through reasons. Information received by itself is not sufficient and for converting suspicion into belief, the ITO has to do and record facts and verification process in reasons which is missing in this case making initiation incorrect. 133(6) notice to bank was issued after issuing 148 notice. No other evidence was on record with the AO when he recorded the reasons.*

4. *Copy of reasons recorded must be given to the tax payer as a part of fair play and Principle of natural justice. The order no where speak that the reasons recorded were ever given to the assessee. Justice should not only be done but it should appear to have been done.*

5. *The approval by Ld. PCIT is mandatory as per section 151. Merely writing in Col 13 OK or I am satisfied or approved by CIT, is not proper or sufficient consideration by him as is needed in law. Such an approval do not meet the end of justice and Courts have rejected it.*

6. *Merely cash deposit into bank account do not necessarily mean income. The reasons recorded do not make a case that some business was done and income from such a business is not decalred. (2015) 53 taxman.com 366 (Delhi Trib) etc.*

7. *Cash deposited and cash or other withdrawls are simultaneous – one after the other. It is logical that only net amount deposited be considered as income or peak credit theory be followed in this case. Adding entire deposit amount is not correct/logical. The assessee is entry operator. Case laws give only percentage to be adopted as income of deposits.*

8. *Evidence collected behind the back of the assessee was never given to the assessee for comments/explanation. Use thereof against the assessee in order is against the established view in Kishinchand Chellaram 125 ITR 713 (SC) and there is no other evidence on ITO file to justify the addition so made.*

9. *No notice u/s 143(2) has been issued by the AO which as per Apex Court decision in Hotel Blue Moon is essential and necessary pre-*

condition to make assessment u/s 144/143(3) or so. In absence thereof the asst. so made be annulled.

10. *the notice u/s 148 is dated 29 March 2018 (next two days were holidays). It was (just last date of limitation), it is beyond doubt that notice issued on last date cannot be served within limitation period hence the case is time barred. Insurance and service are interchangeable terms and unless a notice is served its issuance is meaningless.*

11. *There is no direction specific or general in asst. order for levy of interest u/s 234A, B, C but the same has been charged in this case, Such an action is unjust and its levy is denied otherwise consequential relief which may be granted, the same be reduced."*

5. Before us, Learned AR at the outset, stated that the reasons given by CIT(A) for dismissing the appeal are wrong, insufficient and contrary to facts and evidence on record and in law and while dismissing the appeal he has not decided the issue on merits. He stated that one more opportunity be granted to the assessee to plead its case and he undertakes that the assessee would be represented before the authorities and all the required details called for by authorities will be furnished.

6. Learned DR on the other hand supported the order of AO.

7. We have heard the rival submissions and perused the material available on record. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter

assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard. In view of these facts, we set aside the impugned order of CIT(A) and restore the issue to the file of CIT(A) for re-adjudication of the issues after granting sufficient opportunity of hearing to the assessee. Assessee is also directed to furnish the details called for by the lower authorities. In view of our decision to restore the issue to CIT(A), we are not adjudicating on merits the grounds raised by the assessee. **Thus the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced in the open court on 02.02.2023

Sd/-	**Sd/-**
(NARENDER KUMAR CHOUDHRY)	**(ANIL CHATURVEDI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Date:- 02.02.2023
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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI