

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.616/DEL/2023
Assessment Year 2017-18

Amit Makkar, C/o C. Mohan Jain & Co., 204, Triveni Complex, E-10/11/12, Jawahar Park, Laxmi Nagar, Near Heera Sweets, Delhi-110092	v.	ITO, Ward-34(4), Delhi.
TAN/PAN: AGJPM0402B		
(Appellant)		(Respondent)

Appellant by:	Ms. Bharti Sharma, Adv.		
Respondent by:	Shri Om Parkash, Sr.DR		
Date of hearing:	24	04	2023
Date of pronouncement:	24	04	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' in short) dated 27.07.2022 arising from the assessment order dated 19.12.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2017-18.

2. As per its grounds of appeal, the assessee has challenged the additions made on account of cash deposits during demonetization period amounting to Rs.28,40,000/- as unexplained money of the assessee under Section 69A r.w. Section 115BBE of the Act. The

assessee has further challenged the summary disposal of first appeal by the CIT(A) on account of non prosecution.

3. Ms. Bharti Sharma, the Id. counsel attended for the assessee pointed out that the CIT(A) has dismissed the appeal of the assessee *in limine* on the ground of non prosecution of appeal by the assessee before him.

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 non compliance of statutory notices by a very cryptic order without any discussion on merit The CIT(A) has declined to entertain the adjournment invoked the doctrine of *vigilantibus non dormientibus* wherein its is ordained so-

- Law will help only those who are vigilant. Law will not assist those who are careless of his/her right. In order to claim one's right, she/he must be watchful of his/her right. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefits of law.
- A person who has kept mum during the statutory period cannot claim for the enforcement of right after the statutory limitation.

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 cooperation 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 pronounced in the open Court on 24/04/2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /04/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**