

**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.659/DEL/2023
Assessment Year 2012-13

Usha Singh, Ch. No.206-207, Ansal Satyam RDC, Rajnagar, Ghaziabad. Uttar Pradesh.	v.	ITO, Ward-2(1), Ghaziabad.
TAN/PAN: ATDPS9143C		
(Appellant)		(Respondent)

Appellant by:	Shri Akhilesh Kumar, Adv. Shri Vipin Garg, Adv.		
Respondent by:	Shri Om Parkash, Sr.DR		
Date of hearing:	24	04	2023
Date of pronouncement:	27	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 23.08.2022 arising from the assessment order dated 30.11.2019 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per the grounds of appeal, the assessee has challenged the *ex-parte* order passed by the Assessing Officer and also the summary dismissal of the first appeal by the Id. CIT(A) *in limine* by an *ex-parte* order.

3. When the matter was called for hearing, the ld. counsel for the assessee submitted that the assessee is a widow and an illiterate lady who could not understand the case and the legal procedures in its prospective and therefore omitted to respond to the statutory notices by the Revenue Authorities inadvertently and without any *mala fides*. The ld. counsel further pointed out that there is also a delay of 143 days in filing the appeal by the assessee which may also be condoned as it has not caused any serious prejudice to the Revenue and keeping in mind the ordinary background of the Assessee.

4. Having regard to the smallness of delay and in the absence of any grave prejudice to the Revenue by such belated appeal of 143 days before the Tribunal, we condone the delay for the cause of substantial justice and thus proceed to dispose of the appeal on merits.

5. 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 by a very cryptic order. The CIT(A) eventually dismissed the appeal of the assessee *in limine* and essentially invoked the doctrine of *vigilantibus non dormientibus* wherein it 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.

6. 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.

7. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the Assessing Officer in the larger interest of justice with a view to enable the assessee to avail proper opportunity for presenting its case before the Assessing Officer *de-novo*. Needless to say, the assessee shall extend full co-operation to the Assessing Officer without any demur, failing which, the Assessing Officer shall be at liberty to conclude the assessment proceedings in accordance with law.

Hence, the order of the CIT(A) appealed against, is set aside and all the issues arising in the impugned appeal are restored back to the file of the Assessing Officer for fresh adjudication in accordance with law after giving reasonable opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 25/04/2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /04/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**