

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 420/Ind/2022
(Assessment Year:2011-12)

Bana Singh G-2/119, Milestone 100, Trilanga Road, Gulmohar Colon Bhopal	Vs.	ITO 2(4) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: BDXPS 2724 Q		
Assessee by	Shri Gagan Tiwari, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	22.06.2023	
Date of Pronouncement	22.06.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 22.11.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2011-12. The assessee has raised following grounds of appeal:

“1.That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) is not justified in dismissing the appeal of the assessee.

2.That on the facts and in the circumstances of the case and in law, the issue of notice u/s.148 and the assessment made pursuant to such notice are unlawful and without jurisdiction and, therefore, be cancelled

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not justified in confirming the protective addition made at Rs. 1,44,17,317.

4. That on the facts and in the circumstances of the case. and in law as the assessee does not maintain any books of accounts and therefore the addition of Rs. 14417317 u/s 68 is unlawful and unjustified and therefore be deleted.

5. That on the facts and in the circumstances of the case and in law, the addition of Rs. 14417317 is unlawful and unjustified and therefore be deleted.

6. That on the facts and in the circumstances of the case and in law, the sum of Rs.14417317 does not represent does not represent the undisclosed income of the assessee and therefore the addition of Rs.14417317 is unjustified and unlawful and therefore be deleted.

2. We have heard the Ld. AR as well as Ld. DR and carefully perused the impugned order of the Ld. CIT(A). The assessee raised various grounds before the Ld. CIT(A) including the validity of the reopening of the assessment as well as protective additions made in the hands of assessee. The Ld. CIT(A) dismissed the appeal of the assessee for want of prosecution when nobody on behalf of the assessee responded to the various notices issued by the Ld. CIT(A). The relevant finding of the Ld. CIT(A) is as under:

“6. The aforesaid non compliances reveals beyond doubt that the appellant has nothing to say in the matter of present appeal. Thus, it appears that the assessee is not interested in prosecution of the present appeal and the same is liable to be dismissed on this ground itself. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in the well known dictum "VIGILATIBUS, NON DORMIENTIBUS, JURA SUBVENIUNT". Considering the facts and relying on the decision of the Hon'ble, ITAT, Delhi Bench, in the case of CIT Vs Multiplan India Ltd. reported in 38-ITD-320 and the judgement of the Hon'ble Madhya Pradesh High Court in the case of Estate of Late Tukoji Rao Holker Vs. CWT (1997) reported in 223-ITR-480 the present appeal is hereby dismissed.

7. The appellant has raised grounds of appeal No. 1 to 5 which challenge the addition of Rs. 1,44,17,317/- made by the AO u/s 68 of Act and challenged the notice u/s 148 issued by the AO. It is noted that the appeal of the appellant has been dismissed by me for non prosecution in para 6. In view thereof the various grounds raised in appeal have become academic in nature. Grounds of Appeal No. 1 to 5 are dismissed.”

3. Thus, it is clear from the impugned order of the Ld. CIT(A) that the appeal of the assessee was not adjudicated on merits but it was dismissed for want of prosecution. Accordingly, the impugned order of the Ld. CIT(A) is not in accordance with provisions of section 250(6) of the Act and liable to be set aside. We order accordingly and matter is remanded to the record of the CIT(A) for deciding appeal of the assessee afresh on merits after giving one more opportunity of hearing to the assessee.

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

The Order is pronounced in the open court after conclusion of the hearing on 22.06.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 22.06.2023

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

Sd/-

(VIJAY PAL RAO)
Judicial Member

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*