

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**
BEFORE, SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.2772/Del/2023
(Assessment Year : 2011-12)

Mukesh Village Atterna, Distt. Sonipat Haryana –131 001 PAN No. AVAPK 7963 K (APPELLANT)	Vs.	Income Tax Officer Ward – 3, Sonapat (RESPONDENT)
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Assessee by	Shri Ravinder Singh Saini, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	11.12.2023
Date of Pronouncement:	11.12.2023

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 03.08.2023 arising from the assessment order dated 19.12.2018 passed by the Assessing Officer (AO) under Section 144 read with section 147 of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2011-12.

2. The grounds of appeal raised by the assessee read as under:

- “1. *The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with legal requirements of the provisions of section 147/148 of the Income tax Act therefore such assessment is void ab initio and liable to be quashed.*
2. *The Ld. AO has erred both in law and circumstances of the case in initiating action u/s 147 of IT Act ignoring the fact that the proceedings have been initiated without*

application of independent mind on the material available on record. IN view of the above defects in the compliances the resultant reassessment proceedings are required to be set aside.

3. *The Ld. AO has erred both in law and circumstances of the case in initiating action u/s 147 of IT Act ignoring the fact that the proceedings have been initiated by mechanical approval accorded by the approving authority and such approval vitiates the assessment.*
4. *The Ld CIT(A) has erred in law in upholding addition of Rs.28,22,660/- without providing sufficient opportunity to the appellant and therefore such additions are against the principles of natural justice are not tenable in law.*
5. *The ld CIT(A) have erred both in law and in facts of the case in upholding the addition of Rs.28,22,660/- made on account of peak credit of the deposits made in the bank account during the year without appreciating the facts of the case.*
6. *The appellant craves leave to add, delete, modify/ amend the above grounds of appeal with the permission of the Hon'ble appellate authority."*

3. When the matter was called for hearing, learned Counsel for the assessee submitted at the outset that both the CIT(A) as well as the Assessing Officer has passed the order *ex parte* in a summary manner due to alleged non-compliance of notices issued for hearing. In this regard, the learned Counsel pointed out that none of the notices were ever served on the assessee and the assessee was not privy to any of the appointed date of hearing, either before the learned CIT(A) or before the AO. The learned Counsel also pointed out that the CIT(A) has passed the order *ex parte in limine* by making reference to the decision of the Tribunal in the case of CIT vs. Multiplan India Pvt. Ltd. 38 ITD 320 (Delhi) and dismissed the appeal for non-prosecution of the case by the assessee. The issue has not been disposed of on merits on various grounds. The learned Counsel thus sought restoration of the matter before the Assessing Officer for fresh determination of the various points as per grounds of appeal.

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 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 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 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.

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

Order was pronounced in the open court on 11.12.2023

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 11.12.2023

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI