IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI

BEFORE SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No. 1075/DEL/2020
Assessment Year 2010-11

A to Z Stock Trade Pvt. Ltd., 11A/34 WEA Karol Bagh	Vs.	ITO Ward-1(1) New Delhi
TAN/PAN: AAGCA2605L		
(Appellant)		(Respondent)

Appellant by:	Shri Pranav Yadav, Adv.		
Respondent by:	Shri Kanav Bali, Sr.DR		
Date of hearing:	03	01	2024
Date of pronouncement:	03	01	2024

O R D E R

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)-XXXII, New Delhi ('CIT(A)' in short) dated 17.01.2020 arising from the assessment order dated 30.12.2016 passed by the Assessing Officer (AO) under Section 147 r.w. Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

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

"On the facts and circumstances of the case and in law, the CIT (A) erred in passing ex-parte order.

On the facts and circumstances of the case and in law, the CIT (A) erred in passing order without providing proper opportunity of being heard.

On the facts and circumstances of the case and in law, the order passed by CIT (A) is against the principles of natural justice.

On the facts and circumstances of the case and in law, the CIT (A) erred in not adjudicating the grounds of appeal on merit.

On the facts and circumstances of the case and in law, the notice under section 148 of the Income Tax Act, 1961 issued in the case is bad-in-law, void and without jurisdiction and, therefore, the said notice along with the assessment order passed by the assessing officer on the foundation of such notice are liable to be quashed and CIT (A) erred in not holding so.

On the facts and circumstances of the case and in law, the notice u/s 148 issued in this case is contrary to law including the specific provision of section 147 to 151 of the Act and CIT (A) erred in not holding so.

On the facts and circumstances of the case and in law, the CIT (A) erred in confirming the addition."

3. When the matter was called for hearing, the ld. counsel at the outset submitted that the present appeal prosecuted by the assessee arises from an *ex-parte* order passed by the CIT(A) owing to non attendance from the assessee. In this regard, the ld. counsel submitted that the assessee has admittedly attended the assessment proceedings without any reservation and the assessment was framed under Section 147 r.w. Section 143(3) of the Act. From the text and tenure of the assessment order, it can be seen that the assessee had not only attended the proceedings but had also filed objections on the proposed escapement. The re-assessment has been carried out on the basis of presumed *modus operandi* towards 'Code Client Modification' based on certain report received by the Assessing Officer from Directorate of Intelligence and Criminal Investigation, New Delhi. Whooping additions of Rs.1,96,11,369/- were made to the meager return income of Rs.3,00,180/-. As Against such high pitched addition, the assessee e-filed appeal within 15 days and challenged the lack of jurisdiction assumed under Section 148 as well as legitimacy of additions on merit. In the first appellate proceedings, the assessee filed adjournment

letters as tabulated by the CIT(A) himself. The CIT(A) ultimately passed an *ex-parte* order *in limine* on the grounds of non prosecution of the appeal. The grounds raised on behalf of the assessee have not been dealt with on merits and were dismissed solely by citing the reasons of non furnishing of any submissions. The ld. counsel submitted that while the assessee has taken liberty and sought adjournments but however has not disregarded the show cause notices. Coupled with this, when seen in conjunction, the assessee has duly attended before the AO in the original proceedings and therefore, the *ex-parte* order resulting in such large scale additions if endorsed would result in serious miscarriage of justice. The ld. counsel pleaded that in the circumstances, the assessee by not attending the proceedings before the CIT(A), does not stand to any benefit but rather acted to its own detriment.

4. As further submitted, the CIT(A) has passed the order *in limine* without compliance of Section 250(6) of the Act without disposing of the issues on merit. The ld. counsel further submitted that the CIT(A) ought not to have imputed any deliberate act or culpable negligence in the absence of any benefit to the assessee.

5. The ld. counsel thus submitted that in the interest of substantial justice and in the absence of any culpability, one more chance should be given to the assessee to explain its case either before the CIT(A) or before the AO. The ld. counsel thus sought an appropriate relief in the matter.

6. The ld. DR for the Revenue, on the other hand, referred to and relied upon the first appellate order and submitted that the multiple notices were issued to the assessee and except the

adjournment applications, the assessee has not filed any evidence to corroborate the grounds. The CIT(A) was thus left in no option but to proceed *ex-parte* and in the absence of any material, the order passed by the CIT(A) is just and reasonable and thus no interference is called for.

7. We have carefully considered the rival submissions and perused the orders of the CIT(A) and the AO.

8. The assessee has pleaded restoration of *ex-parte* passed by the CIT(A) for adjudication afresh in accordance with law in the matter. We firstly note that it is undisputed fact that assessee has diligently attended the proceedings before the Assessing Officer in the re-assessment proceedings. Before the CIT(A) as well, the assessee has responded to the notices on most occasions and filed adjournment letters and thus has not disregarded the notices altogether. The CIT(A) has passed an *ex-parte* order *in limine* mainly on the ground of non prosecution. In this backdrop, we refer to Section 250(6) of the Act which enjoins that CIT(A) shall state the point for determination along with reasons. In the decision making process, it is incumbent upon the CIT(A) to deal with the grounds on merit even in an *ex-parte* order. There is no reference in the present case where the records have been called for by the CIT(A) to examine the issues on merit while framing *ex-parte* order. The dismissal of appeal on account of non prosecution is thus not justified in the light of the decision rendered by the Hon'ble Bombay High Court in the case of *CIT vs. Premkumar Arjundas Luthra (2017) 291 CTR 614 (Bom.).*

9. In the totality of the circumstances, we consider it just and expedient to restore the matter back to the CIT(A) in larger

interest of justice with a view to enable the assessee to avail proper opportunity to dispose of appeal before the CIT(A) on various points. Needless to say, the assessee shall extend full co-operation to the CIT(A) without *demur* failing which the CIT(A) shall be at liberty to conclude the appellate proceedings in accordance with law. Hence, the order of the CIT(A) is set aside and 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.

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

Order was pronounced in the open Court on 03/01/2024

Sd/-	**Sd/-**
[SAKTIJIT DEY]	**[PRADIP KUMAR KEDIA]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

DATED: **/01/2024**

Prabhat