

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
&  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

I.T.A. No.233/DEL/2024  
Assessment Year 2017-18

|   |     |                                    |
|---|-----|------------------------------------|
| <b>Jagjeet Singh</b><br>WZ-39, Old Sahibpura, Tilak Nagar<br>New Delhi – 110018 | Vs. | <b>ITO</b><br>Ward-2(2)<br>Gurgaon |
| TAN/PAN: BRGPS 0726 P<br>(Appellant)  |     | (Respondent)                       |

|                        |                             |    |      |
|------------------------|-----------------------------|----|------|
| Appellant by:          | Shri Anil Jain, C.A.        |    |      |
| Respondent by:         | Mr. Waseem Arshad, CIT (DR) |    |      |
| Date of hearing:       | 23                          | 04 | 2024 |
| Date of pronouncement: | 08                          | 05 | 2024 |

**ORDER**

**PER PRADIP KUMAR KEDIA-AM:**

The captioned appeal has been filed at the instance of the assessee against the order passed under section 250 of the Income Tax Act, 1961 by Commissioner of Income Tax (Appeals)-Delhi ('CIT(A)' in short) dated 28.11.2023 arising from the assessment order dated 16.11.2019 passed by the Assessing Officer (AO) under Section 144 of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2017-18.

2. When the matter was called for hearing, the learned Counsel for the assessee at the outset, pointed out that the CIT(A) issued last notice dated 18.10.2023 for compliance by 07.11.2023. The assessee sought adjournment vide letter dated 07.11.2023 to enable it to adduce evidences and explain the source of cash deposits and other credit entries aggregating to Rs.1,00,81,260/-. The CIT(A) however, passed the order by dismissing the appeal of the assessee *in limine* in a hurry without giving reasonable opportunity to the assessee. The learned Counsel submitted that the assessee is engaged in the business of retail trade of cotton fabric similar to earlier years. The similar entries were carried out in the earlier years to which assessee has filed return for the same

business for A.Ys. 2015-16 & 2016-17 under section 44AD of the Act having turnover of 33.21 lacks in A.Y. 2015-16 and 51.12 lacks in A.Y. 2016-17. For the A.Y. 2017-18 in question, the assessee has filed return declaring a turnover of Rs.97,15,464/- and declared income thereon at Rs.6,25,268/-. Learned Counsel submitted that the impugned credits by way of cash and other entries frowned upon by the Revenue authorities represents the business transactions of the assessee and the corresponding entries have been made to account for such business transactions. The learned Counsel submitted that the additions made by the AO and endorsed by the CIT(A) oblivious of such facts that such entries represent business transactions of the assessee on which the assessee as duly paid taxes in accordance with law. The learned Counsel thus urged for a fresh opportunity to address the Revenue authorities on factual matrix for obtaining a benign view in the matter.

3. The learned DR for the Revenue relied upon the respective orders passed under section 250 and 144 of the Act and submitted that the assessee was given ample opportunity by the lower authorities and in the absence of any cogent explanation offered for non-compliances, the Revenue authorities were constraint to pass the orders based on material available on record. The learned DR thus submitted that no interference is thus called for.

4. We have carefully considered the rival submissions and perused the material on record. 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 co-operation 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 08/05/2024**

**Sd/-**

**[SUDHIR PAREEK]  
JUDICIAL MEMBER**

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

**DATED: 08/05/2024**

*Priti Yadav, Sr. PS\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar