

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

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1176 /Del/2024
Assessment Year 2012-13

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| Vinod Kumar Rana A-89, Sector-11, Vijay Nagar Ghaziabad | Vs. | ITO, Ward-2(2)(5) Ghaziabad |
| TAN/PAN: AHBPR8079C | | |
| (Appellant) | | (Respondent) |

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|------------------------|--|----|------|
| Applicant by: | Shri Govind Aggarwal, Chartered Accountant | | |
| Respondent by: | Shri Om Prakash, Sr.DR | | |
| Date of hearing: | 18 | 06 | 2024 |
| Date of pronouncement: | 18 | 06 | 2024 |

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)-National Faceless Appeal Centre (NFAC), Delhi ['CIT(A)' in short] dated 18.01.2024 arising from the assessment order dated 28.12.2019 passed by the Assessing Officer (AO) under Section 147 r.w. Section 144 of the Income Tax Act, 1961 (the Act) concerning A.Y. 2012-13.

2. As per the grounds of appeal, the assessee has challenged the addition of Rs.11,10,000/- made to the returned income alleging unexplained and undisclosed income earned by the assessee.

3. When the matter was called for hearing, the Id. counsel for the assessee pointed out at the outset that upon inquiry under Section 133(6) by the AO with the bank on 14.12.2019, the bank vide e-mail

dated 27.12.2019 furnished certain information towards the bank account of the assessee. These facts can be seen from paragraph 3 of the assessment order. The AO however passed an order on the next date, i.e., 28.12.2019 without confronting the result of the inquiry carried out by the AO in violation of principles of natural justice. The adverse view was taken against the assessee apparently without giving opportunity.

4. The CIT(A) in the First Appeal has proceeded *ex-parte* due to non-compliance of the notices as alleged. To address the non-compliance, the Id. counsel referred to the affidavit dated 4th June, 2024 signed by the assessee wherein the assessee claims that he is not conversant with the tax laws and was wholly dependent on Shri Ashish Singhal, Chartered Accountant who died during Covid-19 period on 13.05.2021. The notice of hearing by the CIT(A) thus could not be complied with, by the erstwhile counsel of the assessee. The Id. counsel accordingly sought suitable relief in the matter.

5. On perusal of the order of the CIT(A), I 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.

6. I 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 along with 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 non-appearance. 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. I also find traction in the plea of the assessee that non-compliance occurred before CIT(A) is not deliberate but on account of demise of the counsel of the assessee. I also see justification in the plea towards lack of opportunity by AO.

8. In the totality of the circumstances, I consider it just and proper 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 while adjudication 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 be 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.

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

Order was pronounced in the open Court on 18th June, 2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat