

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

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

ITA No.3476/Del/2023
(Assessment Year : 2011-12)

Rajiv Kumar Village - Sawda, Post Office-Nizampur Nangloi, Delhi – 110 081 PAN No. BIXPK 7891 R (APPELLANT)	Vs.	ITO Ward – 37(2) Delhi – 110 002 (RESPONDENT)
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Assessee by	Shri Ravinder Singh, Adv.
Revenue by	Shri Vivek Vardhan, Sr. D.R.

Date of hearing:	06.05.2024
Date of Pronouncement:	06.08.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dated 31.10.2023 arising from the assessment order dated 04.12.2018 passed by the ITO, Ward – 37(2), New Delhi (hereinafter referred to as ‘AO’) under Section 144/147 of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2011-12.

2. As per the grounds of appeal, the assessee has challenged the additions of Rs.28,30,845/- towards being estimated additions in relation to share transactions.

3. Briefly stated, the case of the assessee was reopened under section 148 r.w.s 147 of the Act for A.Y. 2011-12 on the basis of certain information received towards share transaction of Rs.28,65,09,800/- carried out in the share market and commodity market. It was observed by the AO that assessee has not filed its return of income for A.Y. 2011-12 in question. Notices under section 142(1) of the Act were issued. However, no return was placed before the AO. Notice under section 133(6) was issued to Multi Commodity Exchange etc. for obtaining details of share/commodity transactions but no however reply was received. Based on the information available in record of the department, the AO estimated 1% of the turnover as estimated income of the assessee and quantified additions at Rs.28,56,098/-.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however, dismissed the appeal of the assessee *in limine* owing to non-compliance of the notices of hearing based on the maxim “*Vigilantibus non dormientibus jura subveniunt*” .

5. When the matter was called for hearing, the learned Counsel for the assessee submitted that the assessee is an individual who could not understand the case and the legal procedures in its prospective and therefore, committed omission to respond to the statutory notices by the Revenue Authorities inadvertently and without any *mala fides*.

6. 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 it is observed 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.*

7. We 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 merely 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 by way of 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 noncompliance without addressing the issue on merits.

8. 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.

9. 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.

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

Order pronounced in the open court on 06.08.2024

Sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Date:- 06.08.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI