

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.3507/DEL/2023
Assessment Year 2017-18

Suparn Vaidik House No.242 Gurugram, Haryana	Vs.	ITO, Ward-4(3) Gurugram
TAN/PAN: ABMPV8081H		
(Appellant)		(Respondent)

Appellant by:	Shri Sankalp Malik, Advocate		
Respondent by:	Shri Gurpreet Singh, Sr.DR		
Date of hearing:	16	05	2024
Date of pronouncement:	07	08	2024

ORDER

PER PRADIP KUMAR KEDIA-AM:

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 17.10.2023 arising from the assessment order dated 30.12.2019 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2017-18.

2. As per its grounds of appeal, the assessee has challenged the additions of Rs.56,61,707/- as unexplained cash credit under Section 69A of the Act r.w. Section 115BBE of the Act. The assessee has further challenged the summary disposal of first appeal by the CIT(A) on account of non prosecution.

3. 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 invoking 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.

4. 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 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.

5. 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 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.

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

Order pronounced in the open Court on 07/08/2024

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: **/08/2024**

Prabhat