IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER

ITA No.930/Del/2024, A.Y.2017-18)

Ramesh Gupta (Represented by Deepak Gupta, Legal Heir) 1 & 2, Madipakkam Koot Road, Madipakkam, Chennai-600091 PAN: AAHPG0431G	Vs.	ITO, Ward 30(4), New Delhi
(Appellant)		**(Respondent)**

Appellant by	Sh. Uttam Chand Jain, CA
Respondent by	Sh. Akhilesh Yadav, Sr. DR

Date of Hearing	10/09/2024
Date of Pronouncement	23/09/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2017-18 filed by the assessee is directed against the order dated 02.08.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), New Delhi [hereinafter, the 'CIT(A)'].

2. Following grounds are raised in this appeal: -

"*1.* For that the order of the learned CIT (Appeals) is *contrary to law, facts and circumstances of the case and in any case is opposed to the principles of equity, natural justice and fair play.*

2. *For that the Notices Issued U/s. 142(1) by the learned Assessing Officer is bad in law, illegal, invalid and/or without jurisdiction and / or in excess of jurisdiction under the facts and circumstances of the case.*

3. *For that the order passed by the ITO u/s. 144 r.w.s. 142(1) is bad in law, illegal, invalid and/or without jurisdiction and / or in excess of jurisdiction under the facts and circumstances of the case.*

4. *For that the Notice U/s. 142(1) issued by the learned ITO, Delhi and in the absence of order U/s. 127, the order passed by the Income Tax Officer, Delhi, is without jurisdiction and needs to be squashed under the facts and circumstances of the case*

5. *For that the order passed by the ITO, Delhi, has erred in not providing an opportunity of being heard before completing the assessment and in not considering the return of income filed earlier as well as in response to the Notice under the facts and circumstances of the case.*

6. *For that the learned ITO, Delhi, has erred in coming to conclusion that the return has not been filed against the Notice U/s. 142(1) under the facts and circumstances of the case.*

7. *For that the learned Assessing Officer has erred in proceedings with assessment proceedings, when the Pr. Commissioner of Income Tax, Delhi 10, was seized of the case by issue of Notice u/s. 127(2) under the facts and circumstances*

8. *For that the Learned Assessing Officer has erred in invoking the provision of Section 69A under the facts and circumstances of the case.*

9. *For that the order passed by the CIT (Appeals) has erred in not providing an opportunity of being heard before disposing of the appeal under the facts and circumstances of the case*

10. *For that the order passed by the CIT(Appeals) has erred in not considering the facts as provided along with Form 35 while disposing of the appeal on merits under the facts and circumstances of the case*

11. *For that the Learned CIT(Appeals) has erred in not passing a speaking order and not deciding on all the ground of appeal under the facts and circumstances of the case.*

PRAYER

For these grounds and such other grounds that may be urged before or during the hearing of the appeal it is most humbly prayed that the Honourable Income Tax Appellate Tribunal may be pleased to

a. Quash the order of the ITO passed under 144 of the Income Tax Act,1961

b. Delete the addition made under section 69A

c. Pass such other orders as the Hon'ble Appellate Tribunal may deem fit."

2.1 In nutshell, the sole issue for determination before us is that whether the Assessing Officer (hereinafter, the 'AO'), who passed the assessment order has valid jurisdiction over the appellant/assessee for completing the assessment.

3. The relevant facts giving rise to this appeal, in brief, are that the appellant/assessee, a resident of Chennai, filed his original Income Tax Return (hereinafter, the 'ITR') on 02.12.2019 declaring income of Rs. 8,05,660/-. Based on the data relating to cash deposit of Rs. 47,00,000/- during the demonetization period, the ITO-Ward, 30(4), New Delhi issued notice under Section 142(1) of the Income Tax Act, 1961 (hereinafter, the 'Act') on 13.12.2017 for filing ITR. The appellant/assessee also did not ensure compliance of notice dated 25.09.2019. However, he responded to the notice dated 28.11.2019 under section 142(1) of the Act, through email, on 03.12.2019 as under: -

> *"In response to the notice served under section 142(1) of Income Tax Act, 1961, I have submitted my IT return for the A.Y. 2017-18 on 26.11.2019. Actually, the e return was ready and tax is also paid on 31st March, 2019 but ITR could not be submitted due to technical glitches in login. So, I request your good self not to make any proceeding under section 144 of the Income Tax Act, 1961. I*

am also attaching ITR acknowledgement for A.Y. 2017-18 as a proof for return of income."

4. In the part response to the notice under section 142(1) of the Act, through email, on 03.12.2019, the appellant/assessee did not challenge the jurisdiction of the AO and the notice under section 142(1) of the Act in accordance with the provisions of section 124 of the Act. The AO also did not comment anything on the said part response through email on 03.12.2019 in the assessment order. Later, the assessment was completed under section 144 of the Act at income of Rs.84,11,889/- wherein the entire bank deposits of Rs.84,11,889/-made during the relevant year was assessed under section 69A of the Act as unexplained deposit. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who decided the appeal, ex parte, observing as under:-

"6. The order u/s 144 of the I.T.Act, 1961 and the facts of the case have been carefully examined. During the appellate proceedings the appellant was given several opportunities vide notices dated 06.01.2021, 18.10.2021, 18.01.2022, 05.04.2022 & 08.06.2022 to provide proof/necessary evidence in support of his contentions. However, inspite of repeated opportunities, the appellant did not even a single piece of evidence to substantiate his claim. In response to notice dated 08.06.2022, the appellant has only requested for adjournment but not furnished any documentary evidence in support of his claim.

6.1 Keeping in mind the principles of natural justice, one more last opportunity was given to the assessee vide notice dated 25.07.2022 fixing compliance on 15.06.2022. In response, the appellant has again requested to provide further time but not submitted any evidence in support of his claim. The constant negligence and casual approach displayed by the appellant during the appellate proceedings clearly shows that appellant has nothing to say in its defense. Therefore, the

case is being decided on merits as per the facts and the evidences available on record.

7. In this case, a notice u/s 142(1) of the Act dated 13.12.2017 for furnishing a true and correct return of income for A.Y. 2017-18 as the appellant had deposited substantial cash of Rs. 47,00,000/- in his bank account during the demonetization period from 09.11.2016 to 30.12.2016. Various notices u/s 142(1) of the Act were issued but the appellant did not respond.

7.1 Meanwhile, statements of bank account were obtained and perused which revealed that the there were total credits of Rs.84,11,889/- including other than cash credits. Finally, a show cause notice was issued to the appellant proposing addition of Rs.84,11,889/- as unexplained money u/s 69A of the Act. However, again the assessee did not respond. Since, no explanation was received from the appellant; the Assessing Officer had left no choice but to complete assessment proceedings on the basis of available information. The Assessing Officer had completed assessment u/s 144 of the Act on 19.12.2019 assessing income at Rs.84,11,889/- treating all the credits of Rs.84,11,889/- (cash credit of Rs.54,66,500/- + other credits of Rs.29,45,389/-) as unexplained money under the provision of section 69A of the Act.

7.2 In view of the above narrated facts, the A.O. correctly made the above addition of Rs. 84,11,889/- which is well supported by the provisions of the I.T.Act as well as the evidences before the A.O. Even during the course of present appellate proceedings, the appellant has not submitted any evidences to counter the contentions of the A.O. As has already been stated above, repeated opportunities were given to the appellant to file evidences to substantiate its claim. But the appellant has not filed any such submissions/ evidences. In view of the above facts, the appellant's appeal is dismissed and the addition made by the AO of Rs. 11,15,000/- is upheld."

5. Aggrieved, the legal heir ofthe appellant/assessee filed appeal before Chennai Bench of ITAT as the appellant/assessee was resident of

Chennai, who vide order dated 10.01.2024 in ITA No. 810/Chny/2022 dismissed his appeal as under: -

> *"3. After taking the legal heirs on record, we are of the view that actual jurisdiction of this appeal lies at ITAT, Delhi and assessee has wrongly filed this appeal in wrong jurisdiction i.e., ITAT, Chennai. Hence, this appeal is dismissed as not filed within the right jurisdiction and dismissed as infructuous. However, we give liberty to the legal heirs to file the appeal before ITAT, Delhi within 30 days of receipt of this order by email. Hence, this appeal is dismissed as infructuous in term of the above."*

5.1. In view of the appellate order in ITA No. 810/Chny/2022, the appellant/assessee filed appeal before Delhi Bench of ITAT along with the delay condonation petition. Considering the facts of the case in entirety and judicial precedents on this score, we are of the opinion that it is a fit case to condone the delay. Accordingly, we condone the delay in filing of this appeal and are deciding the case on merit.

6. The Ld. Authorized Representative (hereinafter, the 'AR'), placing emphasis on the fact that the AO has not have valid jurisdiction over the appellant/assessee as the appellant/assessee had never filed any ITR with Delhi address. Even the PAN was not allotted with Delhi address. Hence, the impugned order requires to be quashed being void-ab-initio. It was contended that the PCIT-10, New Delhi also sent notices to the appellant/assessee for transferring the jurisdiction of the appellant/assessee from Delhi to Chennai on 25.07.2019 and

05.09.2019. However, the jurisdiction was not transferred as the appellant/assessee did not respond to the said notices of the PCIT.

7. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR'), placing emphasis on the finding of the AO and Ld. CIT(A), contended that the appellant/assessee had avoided making any compliance in a tactical way to evade investigations. Since, the appellant/assessee had not challenged ever the jurisdiction of the AO and the PCIT, in response to the above-mentioned notices issued under section 142(1) and 127 of the Act. Therefore, the same could not be challenged after 30 days from the date of receipt of such notices. The appellant/assessee tactfully ensured non-compliance to evade investigations. Since the Ld. CIT(A) had not adjudicated the case on merit and decided each ground of the appeal; therefore, the Ld. Sr. DR prayed for restoration of the matter back to the file of the Ld. CIT(A) for deciding the issue of jurisdiction in view of the above facts. Section 124(3) of the Act is not restricted to mere territorial jurisdictional objections. The Sr. DR placing reliance on the decisions in cases of Raja Bahadur Kamakhya Narain Singh [1964] 51 ITR 566 (Pat.); Shapoorji Pallonji Mistry [1962] 44 ITR 891 (SC); Rai Bahadur Hardutroy Motilal Chamaria [1967] 66 ITR 443 (SC); Rai Bahadur Seth Teomal [1959]36 ITR 9 (SC); Sarupchand and Hukumchand [1953] 23 ITR 382 (MP) and Smt. Sohani Devi Jain v. ITO [1977] 109 ITR 130 (Gau), submitted that the jurisdictional issues could not be raised after the

completion of assessment as the same was not within the time prescribed under section 124(3) of the Act.

8. We heard both the parties and perused the material placed on record. We find that the Ld. CIT(A) has dismissed the appeal ex parte due to non-prosecution. The Ld. CIT(A) has not adjudicated the case on merits. Moreover, he has not decided each ground of appeal after discussing the issues in detail and his reasons for agreeing with the assessment order. As per provisions of section 250(6) of the Act, the CIT (A) is obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which has arisen for his consideration. The CIT(A) is further obliged to state the reason for his/her decision on each such points for determination. The CIT(A) is duty-bound to dispose of the appeal through a speaking order on merits, on all the points for determination including each ground of appeal. Moreover, it is evident from the perusal of section 251(1)(a), 251(1)(b) and Explanation of section 251(2) of the Act that the CIT(A) is required to apply his/her mind to all the issues which arise from the impugned order before him/her, whether or not these issues have been raised by the assessee before him/her.

9. Section 251(1)(a) of the Act provides that while disposing of an appeal against assessment order, the CIT(A) shall have the power to

confirm, reduce, enhance or annul the assessment. Similarly, the section 251(1) (b) of the Act provides that in disposing of an appeal against an order imposing a penalty, the CIT(A) may confirm or cancel such orders or vary it so as to either to enhance or to reduce the penalty. On cumulative consideration of the provisions of section 250(6) of the Act read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) of the Act and Explanation of section 251(2) of the Act, it is concluded that the CIT is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merits. In this regard, it is worth mentioning the finding of the Coordinate Bench in the case of MARC Laboratories Ltd. in ITA No.2731, 2732, 2733, 2730, 2734 & 2735/DEL/ 2022 wherein it has been held as under:

> *"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 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 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.*
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> *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. The assessee is cautioned to 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."

10. In view thereof, without offering any comment on merit of the case we deem it fit to set aside the impugned order and remit the matter back to the file of the CIT(A) for deciding the jurisdictional issue afresh and thereafter other grounds of appeal, in accordance with law, after providing adequate opportunity of being heard to the appellant/assessee and the AO. The appellant/assessee, no doubt, shall cooperate in the fresh appellate proceedings before the Ld. CIT(A).

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

Order pronounced in open Court on 23rd September, 2024

Sd/-	**Sd/-**
(KUL BHARAT)	**(AVDHESH KUMAR MISHRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated:23/09/2024
Binita, Sr. PS
Copy forwarded to:
1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. Sr. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI