

**IN THE INCOME TAX APPELLATE TRIBUNAL "DB" BENCH, PATNA
(Through virtual hearing at Kolkata)**

**BEFORE SHRI RAJPAL YADAV, VP
AND
DR. MANISH BORAD, AM**

**ITA No.199/PAT/2024
(Assessment Year: 2017-18)**

Sharda Prasad
(Through legal heir Mr.
Dharmesh Kumar Prasad)
Naya Bazar, Galla Patti,
Siwan-841226,
Bihar

Vs.

ITO, Ward 2(3),
Income Tax Officer, Dak
Bungalow Road,
Siwan-841226,
Bihar

(Appellant)

(Respondent)

PAN No. AIJPP2505Q

Assessee by : Shri G.P. Tulsian, AR
Revenue by : Shri Ashwani Kr. Singal, DR

Date of hearing: 10.09.2024
Date of pronouncement: 24.09.2024

ORDER

PER DR. MANISH BORAD, AM:

This appeal at the instance of the assessee is directed against the order of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 3RD November, 2023, which is arising out of the assessment order under Section 143(3) of the Income-tax Act, 1961 (the Act) dated 19th December, 2019.

02. The assessee has raised following grounds of appeal: -

"1. That the order of the Assessing Officer is bad in law and order of CIT (A) due to non-appearance in the proceedings by the appellant is also a routine dismissal of the appeal.

2. *The appellant Late Sharda Prasad died on 17.03.2020 after filing the appeal to CIT (A) on 17.01.2020. The legal heirs of the deceased assessee are all employees serving outside the business station Siwan. Therefore, nobody could participate in the proceeding before the Commissioner of Income-tax (Appeals).*
3. *On the telephonic messages by the Assessing Officer after losing before CIT (A), the appellant was informed to deposit the demand and then only the legal heir, Mr. Dharmesh Kumar came to know about the appeal. By that time, the order of CIT (A) had been passed, dismissing the appeal. Therefore, the appellant, the legal heir prays for the natural justice in this case.*
4. *On the merits, the cash deposited during the demonetization period of ₹21,23,000/- is cash of the business available as on 08.11.2016 immediately before the demonetization announcement and after demonetization was announced, the assessee was left with no option but to deposit the SBN currency into his bank account. Therefore, the cash so deposited cannot be treated as unexplained money u/s 69A and again added to income when this amount has already been taxed under the head of PGBP in the ITR filed."*
03. Registry informed that the appeal is time barred by 6 days. Perusal of the condonation application reveals that after passing of the impugned order the assessee had expired and legal heir Mr. Dharmesh Kumar has filed the appeal. Finding it to be a reasonable cause, we condone the delay and admit the appeal for adjudication on merits.
04. At the outset, the learned Counsel for the assessee submitted that for unavoidable circumstances the assessee could not appear before the learned CIT (A), who has finally passed an *ex-parte* order placing reliance on the decision of Delhi Bench of ITAT in *CIT VS. Multiplan India Pvt. Ltd. (1991) 38 ITD 120*. He therefore prayed that the

matter may be restored to the file of the learned CIT (A) for fresh adjudication.

05. On the other hand, the learned Departmental Representative stated that sufficient opportunities was granted to the assessee and that no reasonable cause has been stated by the learned Counsel for the assessee for the alleged non-appearance.
06. We have heard the rival contentions and perused the records placed before us. We observe that the assessee late Sharda Prasad, e-filed the return for A.Y. 2017-18 on 19th August, 2017, showing income of ₹7,85,86/-. The assessee was engaged in the business of whole sale trading of Kirana items in the name of M/s Sharda Prasad Brijesh Kumar. Case picked up for scrutiny under Computer Assisted Scrutiny Selection (CASS) for the reason, *cash deposited during the demonetization period* followed by serving of valid notices under Section 143(2) and 142(1) of the Act. The assessee duly complied to the notices issued under Section 142(1) of the Act and filed the reply to the questionnaire along with fresh audit report, balance sheet and annexure but thereafter on account of failure to produce the books of accounts for verification and the cash book to explain the source of cash deposit the learned Assessing Officer concluded the assessment by making addition of ₹21,23,000/- under Section 69A of the Act.
07. The assessee challenged the said addition for learned CIT (A) but there was continuous non-compliance to the notice



of hearing. Though, the learned CIT (A) is bound to pass a speaking order as contemplated under Section 250(6) of the Act by dealing the issues on merits, we observe that the learned CIT (A) referring to the decision of *Multiplan India Pvt. Ltd. (supra)* has dismissed the appeal without considering the facts of the case. However, considering the prayer of learned counsel for the assessee and also taking note of the non-appearance of the assessee on various dates of hearing, we note that learned CIT (A) had no details so as to examine the facts of the case and therefore, in the interest of justice and being fair to both the parties, we restore the issue raised before us to the file of the learned CIT (A) for fresh adjudication. Needless to mention that proper opportunity of being heard to be provided to the assessee and that the assessee should not seek any adjournments unless otherwise required for reasonable cause. Ground of appeal raised by assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 24.09.2024.

Sd/-
(RAJPAL YADAV)
(VICE PRESIDENT)

Sd/-
(DR. MANISH BORAD)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 24.09.2024
Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata