

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI
(Through Virtual Court Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.4263/Del/2019
Assessment Year: 2010-11

Tushar Sharma,
C/o RRA TAXINDIA,
D-28, South Extn. Part 6I,
New Delhi.

Vs ITO,
Ward 3(3),
Bulandshahr.

PAN : ASQPS4748F

(Appellant)

(Respondent)

Assessee by

: Ms Monika Ghai Advocate

Revenue by

: Shri Vipul Kashyap, Sr.DR

Date of Hearing

: 18.11.2020

Date of Pronouncement

: 18.11.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 29th March, 2019 of the CIT(A), Ghaziabad, relating to assessment year 2010-11.

2. The assessee in its various grounds of appeal has challenged the *ex parte* order of the CIT(A) in sustaining the disallowance/addition made by the AO.

3. Facts of the case, in brief, are that the assessee is an individual and is a partner in the partnership firm, namely, M/s Shivalik Dhan Kutai Udhyog. On the

basis of AIR information that the assessee has deposited cash aggregating to Rs.1,07,42,500/- in his savings bank account during the F.Y. 2009-10, the AO issued notice u/s 148 of the IT Act dated 29th March, 2017. The assessee, in response to the said notice, filed his return declaring an income of Rs.1,56,200/-. The AO completed the assessment u/s 147/143(3) on 28th December, 2017 wherein he added an amount of Rs.1,07,42,500/- since the assessee failed to explain the source of cash deposits in his bank account. Since the assessee did not appear before the CIT(A) despite service of notice, the Id.CIT(A), in the ex parte order passed by him, sustained the addition made by the AO.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. We have heard the rival arguments made by both the sides and perused the materials available on record. It is an admitted fact that despite number of opportunities granted by the CIT(A), the assessee did not appear before her and was filing only adjournment applications for which the Id.CIT(A), following the decision of the Delhi Bench of the Tribunal in the case of CIT vs. Multiplan India Pvt. Ltd., 38 ITD 320 (Del) and the decision of the Honøble Supreme Court in the case of CIT vs. B.N. Bhattacharjee, 118 ITR 461 (SC) and the decision of the Honøble Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. CIT, 223 ITR 480, dismissed the appeal filed by the assessee. However, she has also decided the appeal on merit and sustained the addition made

by the AO on the ground that the assessee failed to substantiate the source of cash deposit by giving any evidence. It is an admitted fact that the assessee was not appearing before the CIT(A) and was seeking adjournment under one pretext or the other. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the ld. CIT(A) and substantiate its case, failing which the ld.CIT(A) is at liberty to pass appropriate order as per law. We hold and direct accordingly.

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

Decision was pronounced on conclusion of Virtual Hearing on 18th November, 2020 itself.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 18th November, 2020.

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi