

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-I' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

**I.T.A .No.-4965 to 4970/Del/2014
(ASSESSMENT YEAR-2004-05 to 2009-10)**

Arun Nayyar, C-3A/137B, Janak Puri, New Delhi-110058. PAN-AABPN5480A (APPELLANT)	vs	DCIT, Central Circle-23, New Delhi-110055 (RESPONDENT)
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Appellant by	Sh.Rohit Garg, CA
Respondent by	Sh.P.Dam Kanunjna, Sr. DR

Date of Hearing	14.10.2015
Date of Pronouncement	30.10.2015

ORDER

These are six appeals filed by the assessee assailing the correctness of the order dated 30.06.2014 of CIT(A)-XII, New Delhi pertaining to 2004-05 to 2009-10 assessment year. All these appeals are being decided by a common order for the sake of convenience. It is seen that the Registry has pointed out a delay of 01 day in each of these appeals. This fact was pointed out to the Ld. AR on 12.10.2015 and the Ld.AR had accordingly sought an adjournment stating that the CIT(A) in each of these appeals has passed an ex-parte order thus the only prayer in the appeals is that the issue may be restored. Pointing that identical orders had been passed by the CIT(A). Referring to the same it was submitted that the assessee in the appeals before the CIT(A) assailed the correctness of the additions made by the AO vide orders passed u/s 143(3)/153A of the Income Tax Act, 1961. These were identically dismissed without addressing the issues. However, since the delay of one day first needed to be addressed the appeals were adjourned. On the next date the Ld.AR filed a condonation of delay petition signed by the assessee. Referring to the same it was stated that the impugned order had been received by the assessee on 12.07.2014 and the delay of one day has occurred in each of the appeals inadvertently, under the mistaken belief that the appeal could be filed on or

before 09.11.2014. Accordingly prayer was made that the delay may kindly be condoned relying upon the following decisions:-

- (i) *Vedabai Alias Vaijayantabai Baburao Patil vs Shantaram Baburao Patil 253 ITR 798 [SC];*
- (ii) *Collector, Land Acquisiton vs. Mst. Katiji 167 ITR 471 [SC];*
- (iii) *Shankarrao vs. Chandrasenkunwar [1987] Suppl. SCC 338 [SC];*
- (iv) *New India Insurance Co.Ltd. vs SMT. Shanti Misra AIR 1976 SC 237 [SC];*
- (v) *O.P.Kathpalia vs Lakhmir Singh AIR 1984 SC 1744 [SC];*
- (vi) *Bharat Singh v. Narendera Kumar [2004] (13) SCC 691;*
- (vii) *Dinesh Nagindas Shah v CIT 273 ITR 229/190 CTR 106 (Gujarat High Court);*
- (viii) *Bharat Auto Center vs CIT 282 ITR 366 [Allahabad high Court].*

2. The Ld. Sr. DR, Sh.P.Dam. Kanunjna stated that although the condonation of 01 day's delay is not being objected to however, in view of the fact that the present appeals were arising out of search thus he was not authorized to argue.

3. The Ld. AR objected to the said request. It was his submission that the argument that these were ex-parte orders passed by the CIT(A) in appeals arising u/s 143(3)/153A was pointed out on 12.10.2015 and thus since despite this fact the Revenue has not considered it appropriate to assign the appeals to a CIT DR thus the oral request may not be accepted as in any event 01 day's delay is not being objected to and the orders are against the statutory provisions and thus anyway the appeals have to be remanded to the CIT(A) thus on this technical objection the appeals may not be adjourned. It was his stand that the orders are non-speaking orders and the departmental request made orally at the last minute should not be accepted. Elaborating the argument advanced on 12.10.2015, the Ld.AR stated that the CIT(A) in the present appeals has referred to four different dates on which notice was stated to have been sent by speed post to the assessee. In regard thereto it was submitted that he is instructed to state on behalf of his client that none of these notices were ever received by the assessee. The conclusion that the assessee has "nothing to appeal against the additions" was assailed and it was argued that the assessee is very much serious and interested in pursuing the present appeals filed. Inviting attention to para 1.3 of the impugned order it was his submission that the impugned order even otherwise in each of these appeals is contrary to law.

4. Accordingly, considering the material available on record in view of the above and the submissions of the parties before the Bench, the delay of one day

is condoned in each of these appeals. The record shows that in each of these appeals the issue for consideration and the facts for consideration have not been brought out in the orders by the First Appellate Authority. It is seen that after referring to the fact that four specific opportunities were provided, the issue has been decided by the Ld. CIT(A) in the following manner:-

1.3. "Further, in view fo the provisions of section 251(1)(c), the Commissioner of Income Tax appeals has the power to dispose of an appeal "in any other case, he may pass such orders in the appeal as he thinks fit". IN the instant case there is enough ground of non appearance of the appellant to decide the matter ex-parte, the appeal is decided on the basis of material available on record. Hence, the action of the AO is upheld and the appeal is dismissed."

4.1. The decision cannot be upheld as it is based on an incorrect appreciation of the relevant provisions of the statute. Section 250 of the Income Tax Act, 1961 sets out the procedure which the CIT(A) is required to follow in appeal. For the purposes of the present proceedings, it is appropriate to set out Section 250(6) of the Act:-

*250. "(1)
(2)
(3)
(4)
(5)
(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.
(6A)....."*

4.1 A perusal of the orders under challenge shows that while deciding the appeals, the Ld. CIT(A) has not followed these mandatory provisions. While deciding the issues the CIT(A) is first supposed to set out the points for determination and thereafter the reasons for the conclusions drawn have to be brought on record. In the absence of this requisite exercise the order cannot be upheld. In view of the above the impugned orders in each of these appeals are set aside and restored back to the CIT(A) with the direction to pass a speaking order in accordance with law.. Needless to say that a reasonable opportunity of being heard shall be provided to the assessee. The said order was pronounced on the date of hearing itself in the presence of the parties.

5. In the result, the appeals of the assessee are allowed for statistical purposes.

The order is pronounced in the open Court on 30th of October, 2015.

**Sd/-
(DIVA SINGH)
JUDICIAL MEMBER**

Dated:30/10/2015

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI