

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 3368/Del/2017 : Asstt. Year : 2012-13

Manish Thakur, 1479, S. P. Mukherjee Marg, Delhi-110006	Vs	Income Tax Officer, Ward-47(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. ABVPT2768C		

Assessee by : Sh. Satyajet Goel, CA

Revenue by : Sh. T. Vasanthan, Sr. DR

Date of Hearing : 18.09.2017	Date of Pronouncement : 25.09.2017
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ORDER

This is an appeal by the assessee against the order dated 28.02.2017 of Id. CIT(A)-16, New Delhi.

2. The only grievance of the assessee in this appeal relates to the confirmation of addition of Rs.1,20,000/-.

3. Facts of the case in brief are that the assessee filed the return of income declaring an income of Rs.9,20,432/-. However, the assessment was framed by the AO by making an addition of Rs.1,20,000/-. It is also noticed from the assessment order dated 28.03.2015 that the AO passed an *ex-parte* order by observing as under:

“The matter was fixed for hearing on 12th Feb. 2015. However, the assessee has not furnished till now. In view of these facts, I am left with no alternative but to decide the

matter on merits. Since the assessment is time barring one, it is difficult for me to give further time.”

4. Being aggrieved, the assessee carried the matter to the Id. CIT(A) who dismissed the same *ex-parte* for *limine* by observing that all the notices sent on the address mentioned in Form No. 35, but there was no compliance.

5. Now the assessee is in appeal. The Id. Counsel for the assessee submitted that no notice for hearing was served upon the assessee, therefore, the Id. CIT(A) was not justified in dismissing the appeal by passing an *ex-parte* order, without providing a due and reasonable opportunity of being heard to the assessee. He further stated that the Registry has pointed out that the Appeal is barred by limitation of 20 days. In this behalf, he filed an Application dated 18.9.2017 for condonation of delay by stating as under:

“The caption appeal is against order of CIT(A)-16, New Delhi dated 28.02.2017. As per the defect notice issued by registry, there is a delay of 20 days in filing of appeal before the Hon'ble ITAT.

*In this connection, we may submit that the case was being handled by Adv. S K Sethi before lower authorities. The delay in filing of appeal is attributable to negligence on the part of earlier counsel which is evident from the fact that even before first appellate authority, no representation was made which leads to passing of *ex-parte* order against the assessee. The assessee being a lay man having no knowledge of Income Tax Act, 1961, relied upon the advice of the earlier counsel.*

However, on receipt of ex-parte order, the assessee changed the counsel and as such the delay in filing of present appeal is on account of delay in obtaining requisite papers from the earlier counsel.

It may be appreciated that the assessee has a good case on merits and the delay being on bonafide grounds, we may request your Honor that the delay of 20 days may kindly be condoned and the appeal may kindly be adjudicated on merits.”

6. During the course of hearing, the ld. Counsel for the assessee reiterated the contents of the aforesaid application. The ld. DR although stated that the delay may not be condoned, but he could not controvert the aforesaid contention of the ld. Counsel for the assessee.

7. I have considered the submissions of both the parties and material available on the record. In my opinion, the assessee has a plausible explanation for the delay in filing the appeal. Therefore, the delay of 20 days is condoned and the appeal is admitted.

8. After perusing the records and submissions of both the parties, it is noticed that the ld. CIT(A) at page no. 2 of the impugned order mentioned that the notice was issued on 13.01.2017 for hearing on 30.01.2017. However, nowhere it is stated that the said notice was served upon the assessee. It is well settled law that nobody should be condemned unheard as per the *maxim* “*audi alteram partem*”. I, therefore, considering the totality of the facts of the present case, deem it

appropriate to set aside this case back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 25/09/2017)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 25/09/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR