

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 4317/DEL/2016 (A.Y 2012-13)

ITA No. 4318/DEL/2016 (A.Y 2012-13)

ITA No. 4319/DEL/2016 (A.Y 2012-13)

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| Anto Narman Peter MZ-40, Ansal Fortune Arcade, Sector-18 Noida AHHPP7430M (APPELLANT) | Vs | DCIT Circle-1 Noida (RESPONDENT) |
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|----------------------|------------------------------------|
| Appellant by | Sh. A. K. Khurana, FCA |
| Respondent by | Sh. B. Ramanjaneyulu Sr. DR |

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| Date of Hearing | 24.10.2017 |
| Date of Pronouncement | 26.10.2017 |

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the order dated 30/05/2016 passed by CIT(A)-1, Noida for the Assessment Year 2012-13.

2. The grounds of appeal are as under:-

ITA No. 4317/DEL/2016

“ 1. The Commissioner of Income Tax (Appeals)-1, Noida (CIT(A))” erred in rejecting an application for adjournment on first instance and passed an order without affording any opportunity of being heard to the appellant.

2. The appellant prays that the order passed by the CIT(A) being against the rules of natural justice be quashed as being void ab initio and/or illegal.

3. That the order passed by Ld.CIT(A) is bad in law and on the facts of the case.

Without prejudice to above.

4. That the Ld.CIT(A) has erred in stating “Neither the appellant has sought any condonation of the delay nor has given any explanation for delay in filing appeal late. In view of this the delay in filing the appeal cannot be condoned.” Whereas the appellant filed the appeal in time as he received the demand notice & Assessment Order late which is apparent from the certified copy of the Assessment order.

5. That the Ld.CIT(A) has erred in sustaining the income of the assessee at Rs.1,94,91,600/- as against the Income returned Aggregating to Rs.16,52,600/-.

6. That the Ld.CIT(A) has erred sustaining the addition of Rs.28,39,000/- and treated it as unexplained cash credit of the assessee u/s 68 of the Income Tax Act, 1961.

7. That the Ld.CIT(A) has erred in sustaining the addition of Rs.1,50,00,000/- related to sale of immovable property as income from short term capital gain.

8. That the Ld.CIT(A) has erred in sustaining the interest charged u/s 234B of the Income Tax Act.

ITA No. 4318/DEL/2016

“ 1. The Commissioner of Income Tax (Appeals)-1, Nodia (CIT(A))” erred in rejecting an application for adjournment on first instance and passed an order without affording any opportunity of being heard to the appellant.

2. The appellant prays that the order passed by the CIT(A) being against the rules of natural justice be quashed as being void ab initio and/or illegal.

3. That the order passed by Ld.CIT(A) is bad in law and on the facts of the case.

Without prejudice to above.

4. That the Ld.CIT(A) has erred in stating “Neither the appellant has sought any condonation of the delay nor has given any explanation for delay in filing appeal late. In view of this the delay in filing the appeal cannot be condoned.” Whereas the appellant filed the appeal in time as he received the demand notice & Assessment Order late which is apparent from the certified copy of

the Assessment order.

5. *That the Ld.CIT(A)-1 erred in sustaining the penalty imposed u/s 271(1)(c) of the Income Tax Act of Rs.55.15.00/-.*

6. *That the Ld.CIT(A)-1 erred in sustaining the allegation that the assessee has no concrete explanation for the transaction of Rs. 1,50,00,000/-.*

7. *That the Ld.CIT(A)-1 erred in sustaining the allegation that the assessee has unexplained cash/credits u/s 68 amounting to Rs.28,39,000/-.*

ITA No. 4319/DEL/2016

1. *The Commissioner of Income Tax (Appeals)-1, Nodia (CIT(A))” erred in rejecting an application for adjournment on first instance and passed an order without affording any opportunity of being heard to the appellant.*

2. *The appellant prays that the order passed by the CIT(A) being against the rules of natural justice be quashed as being void ab initio and/or illegal.*

3. *That the order passed by Ld.CIT(A) is bad in law and on the facts of the case.*

Without prejudice to above.

4. *That the Ld.CIT(A) has erred in stating “Neither the appellant has sought any condonation of the delay nor has given any explanation for delay in filing appeal late. In view of this the delay in filing the appeal cannot be condoned.” Whereas the appellant filed the appeal in time as he received the demand notice & Assessment Order late which is apparent from the certified copy of the Assessment order.*

5. *That the Ld.CIT(A)-1 erred in sustaining the imposed penalty of Rs.10,000/- u/s 271(1)(b) of the Income Tax Act.”*

3. The Ld. AR submitted that the notice was not received by the assessee during the Appellate Proceedings before the CIT(A). Since the CIT(A) passed ex-parte order, the assessee was not given proper opportunity to represent his case. In fact, the CIT(A) rejected the appeal of the assessee on ground of delay in filing appeal but there is no delay in filing appeals. Hence the ex-parte order passed by the CIT(A) be set aside.

4. The Ld. DR submitted that the Assessing Officer has rightly made an

addition. The Ld. DR submitted that the Ld. CIT(A) gave due opportunity to the assessee which the assessee failed to avail. Therefore, the CIT(A) has rightly dismissed the appeal of the assessee.

5. We have heard both the parties and perused the CIT(A)'s order dated 29/07/2016. From the perusal of the records, it can be seen that before the CIT(A) none appeared on behalf of the assessee. The CIT(A) decided the matter ex-parte without going into merits of the case. Therefore, in the interest of justice, this matter is remitted back to the CIT(A) for deciding all the issues afresh in accordance with law. Needless to say, proper hearing should be given to the assessee.

6. In result, all the three appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 26th OCTOBER, 2017.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Dated: 26/10/2017
R. Naheed *

Copy forwarded to:

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

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

ASSISTANT REGISTRAR

ITAT NEW DELHI

| | | Date | |
|-----|--|------------|-------|
| 1. | Draft dictated on | 24/10/2017 | PS |
| 2. | Draft placed before author | 24/10/2017 | PS |
| 3. | Draft proposed & placed before the second member | .2017 | JM/AM |
| 4. | Draft discussed/approved by Second Member. | | JM/AM |
| 5. | Approved Draft comes to the Sr.PS/PS | 26.10.2017 | PS/PS |
| 6. | Kept for pronouncement on | | PS |
| 7. | File sent to the Bench Clerk | 26.10.2017 | PS |
| 8. | Date on which file goes to the AR | | |
| 9. | Date on which file goes to the Head Clerk. | | |
| 10. | Date of dispatch of Order. | | |