

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

**I.T.A. No. 5973/Del/2014  
Assessment Year: 2008-09**

SH. DEEPAK JAIN,  
B-11, BLOCK-B,  
SWASTHYA VIHAR,  
DELHI  
(PAN: AEXPJ4563P)  
**(ASSESSEE)**

VS. ITO, WARD 16(4)  
NEW DELHI

**(RESPONDENT)**

**Assessee by:** Sh. Rohit Tiwari, Adv. & Sh. Shobhit  
Tiwari, Adv. & Sh. SK Gupta, Adv.  
**Revenue by:** Sh. Vijay Kr. Jiwani, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM**

This appeal is filed by assessee against the Order dated 11.12.2012 passed by the Ld. CIT(A-19), New Delhi relating to Assessment Year 2008-09 on the following grounds:-

1. That on the facts and circumstances of the case, the Ld. AO/CIT(A) has erred in making the assessment at total income of Rs. 73,91,028/- as against returned income of Rs. 1,33,660/-.
2. That the appellant was prevented for reasonable cause for not appearing before the lower authorities during the proceedings of the case on account of medical ailments; the appellant having suffered the case of autosomal dominant polycystic kidneys.
3. That on the facts and circumstances of the case and law involved, the AO/CIT(A) has erred in making an addition

of Rs. 72,57,368/- on account of share transactions on the basis of AIR information, as admitted to be genuine, as unexplained investments u/s. 69 of the Income Tax Act, 1961.

4. That on the facts and circumstances of the case, the AO/CIT(A) has erred in making an addition of Rs. 72,57,368/- on account of purchase and sale of shares while the appellant has made investment of Rs. 81,000/- as per the brokers account statement available with the Department.
5. That on the facts and circumstances of the case, the AO/CIT(A) has erred in not allowing a deduction of Rs. 40,523/- on account of Life Insurance Premium paid u/s. 80C, evidenced by the payment receipt and the bank statement.
6. The appellant craves leave to add, alter, amend or vary the ground(s) of appeal before or at the time of hearing.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity. However, we note that there is a delay of 313 days in filing the appeal before the Tribunal and in this behalf the assessee has filed the application alongwith his Admitted Case Summary dated 17-Jun-13, issued by the Sir Ganga Ram Hospital, Department of Nephrology, New Delhi and requested for condoning the delay in dispute on account of self medical grounds. The contents of the aforesaid Application for Condonation of delay are reproduced as under:-

“That the appellate order in the abovementioned case was received by the appellant on 28.10.2013 and the appeal was to be filed within 60 days i.e. by 27.12.2013. In this regard it is respectfully submitted as under:-

1. The appeal could not be filed in time before your honour on account of medical problems of the appellant. The appellant is suffering from the chronic kidney disease. The appellant is ill for the last 15 years as per the clinical summary of Sir Ganga Ram Hospital, New Delhi.
2. As per admitted case summary of the appellant as per Sir Ganga Ram Hospital, New Delhi, the appellant has been diagnosed with the following diseases.
  - a) Autosomal Dominant Polycystic Kidney Disease.
  - b) Hypertension
  - c) Chronic Kidney Disease Stage.
  - d) Cyst Hemorrhage
  - e) Recurrent Cyst Infection
  - f) Acute on chronic kidney disease
  - g) Cardiomyopathy

In view of the medical problems being faced by the appellant for the last 15 years the appellant could not file / attend or submit any documents before AO/CIT(A).

3. That appellant is not having any funds on account of medical expenditure on his illness. It is therefore, prayed that the appellant may kindly be admitted u/s. 253(5) of the Income Tax Act, 1961 and the same be heard on merits.

2.1 After perusing the aforesaid application for condonation of delay alongwith Admitted Case Summary of the assessee dated 17.06.13, we

are of the view that due to reasonable cause on medical grounds the delay was occurred, hence, the delay in dispute is condoned.

3. At the time of hearing, Ld. Counsel of the assessee reiterated the contentions raised in the grounds of appeal and requested to set aside the matter to the file of the Ld. CIT(A) to decide the same afresh, because the exparte orders were passed by the lower authorities and no proper opportunity was given to the assessee by the authorities below. He further stated that the assessee was prevented for reasonable cause for not appearing before the lower authorities during the proceedings of the case on account of medical ailments; the assessee having suffered the case of autosomal dominant polycystic kidneys.

4. Ld. DR has stated that assessee remained non-cooperative before the AO as well as before the Ld. CIT(A) and did not furnish the relevant details or evidence in support of his claim and therefore is not entitled for any lenient view from this Bench. Hence, he requested that the Appeal filed by the Assessee may be dismissed.

5. After hearing both the parties and perusing the impugned order, we are of the view that there is no doubt that assessee remained non-cooperative before the lower authorities, but that was occurred due to his medical conditions, as discussed above. However, it is not disputed fact that the assessee was ailing from following diseases, as a result thereof he was unable to attend the proceedings before the lower authorities and exparte orders were passed.

- a) Autosomal Dominant Polycystic Kidney Disease.
- b) Hypertension
- c) Chronic Kidney Disease Stage.
- d) Cyst Hemmorrhaghe
- e) Recurrent Cyst Infection
- f) Acute on chronic kidney disease
- g) Cardiomyopathy

6. In the background of the aforesaid discussions and the interest of justice, we remit back the issues to the files of the Ld. Commissioner of Income Tax (Appeals) to consider each and every aspects of the issue involved in the Appeal and decide the same afresh, after passing a speaking order, after considering all the evidences/documents to be filed by the assessee, if any. Needless to add that the assessee should be given adequate opportunity of being heard. The assessee is also directed to file the requisite documents/ evidences before the Ld. CIT(A), if any, to substantiate his case and did not take any unnecessary adjournment.

7. In the result, the appeal filed by the assessee stand allowed for statistical purposes.

Order pronounced on 17/07/2018.

**Sd/-**

**[T.S. KAPOOR]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

*Date 17/07/2018*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches