

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER**

**ITA No.3768/Del/2018
Assessment Year : 2008-09**

Mulayam Singh, H.No.594, Shyam Park Main, Sahibabad, Ghaziabad, Uttar Pradesh.	Vs.	ITO, Ward- 1(4), Ghaziabad, Uttar Pradesh.
PAN : BDIPS7017P		
(Appellant)		(Respondent)

Appellant by : Shri Rohit Tiwari, Adv.
Shri Shobhit Tiwari, Adv.
Respondent by : Shri D. S. Rawant, Sr. DR
Date of hearing : 08-10-2018
Date of pronouncement : 08-10-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the assessee is directed against the order dated 26.03.2018 of the CIT(A), Ghaziabad relating to assessment year 2008-09.

2. Facts of the case, in brief, are that the assessee is an individual. The assessment in this case was completed u/s 147/143(3) determining the total income at Rs.17,92,560/- as against returned income of Rs.1,31,131/-. The Assessing Officer in the said order has made addition of Rs.16,61,424/- on account of short term capital gain on sale of residential plot bearing Plot No.10-A/63 at Sector-10A, Vasundhara, Ghaziabad on 05.11.2015. Since the appeal

was filed late as per ITNS 51, the ld. CIT(A) dismissed the appeal trading the same as non-est on account of delay in filing of the appeal.

3. Aggrieved with such order of the ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds :-

“1. That on the facts and in the circumstances of the case and in law the Ld. Commissioner (Appeals) erred while rejecting the ground of Appeal by treating the appeal preferred by Appellant as non est being defective on the ground of delay in filing Appeal.

2. That the Ld. CIT(A) was not justified in dismissing the Appeal by not appreciating the fact that all notices and Assessment order were sent at wrong address was the sole reason for delay in filing the appeal.

3. The Appellant craves leave to add, amend, alter very and / or withdraw any of all the above grounds of Appeal before the appeal is finally heard or disposed of.”

4. The ld. counsel for the assessee submitted that the assessment order was not properly served on the assessee and it was sent to a wrong address for which the assessee could not obtain the order. Subsequently, he obtained a certified copy from the Assessing Officer and within 30 days of receipt of the said order, the assessee filed the appeal before the CIT(A). He accordingly submitted that the delay in filing of the appeal before the CIT(A) if any be condoned and the assessee should be given an opportunity to substantiate his case on merit before the CIT(A).

5. The ld. DR on the other hand strongly supported the order of the ld. CIT(A). He submitted that the demand notice was served on the assessee on 14.12.2015 and the assessee preferred an appeal before the ld. CIT(A) on 19.05.2016. Therefore, there is no justifiable reason for condoning the delay as

there was no reasonable cause for filing of the appeal before the CIT(A). He accordingly submitted that the Id. CIT(A) is fully justified in dismissing the appeal on account of delay in filing of the appeal.

6. I have considered the rival arguments made by both the sides and perused the material available on record. I find from the order of the Id. CIT(A) that the assessee at the time of hearing has filed a copy of the letter obtained from Mohan Nagar Zone, Ghaziabad Nagar Nigam Office confirming the address of the assessee at House No.594, Shyam Park Main, Sahibabad, Ghaziabad. He has also filed the copy of House Tax Receipts, copy of Aadhar Card, Copy of Voter ID Card and Bank Pass Book showing the address of the assessee at House No.594, Shyam Park Main, Sahibabad, Ghaziabad. However, a perusal of the assessment order shows that the order was sent to the following address :-

Shri Mulayam Singh,
S/o Shri Kartar Singh,
232, Main Shyam Park,
Sahibabad, Ghaziabad.

7. Thus, apparently it is seen that the assessment order was sent to an address other than the address mentioned by the Assessing Officer. Although the various challans produced by the assessee in the Paper Book show that the address mentioned in the challans is the same as per the address in the assessment order, however, considering the totality of the facts of the case and

in the interest of justice, I deem it proper to restore the issue to the file of the Id. CIT(A) with a direction to condone the delay in filing of the appeal and decide the appeal on merit. Needless to say, the Id. CIT(A) shall give due opportunity of being heard to the assessee and decide the issue as per fact and law. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court at the time of hearing itself i.e. on this 08th October, 2018.

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

Dated: 08-10-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi