

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No.7390 & 7391/Del/2018
Assessment Year: 2009-10**

Ratan Singh Yadav, R.S. Bhawan, Gandhi Nagar, Tehsil-Bhogaon, Mainpuri (U.P.). PAN-AACPY9853F (Appellant)	vs.	Income-tax Officer, Ward 2(2), Ghaziabad. (Respondent)
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Appellant by	Ms. Rano Jain, Advocate
Respondent by	Smt. Sulekha Verma, CIT/DR

Date of Hearing	20.03.2019
Date of Pronouncement	27.03.2019

ORDER

Per L.P. Sahu, A.M.:

Both these appeals, pertaining to assessment year 2009-10, are filed by assessee against the orders dated 28.09.2018 of Id. CIT(A), Ghaziabad, whereby both the appeals of the assessee were dismissed as defective being barred by limitation. The grounds raised in both the appeals read as under :

Grounds in ITA No. 7390/Del/2018:

"1. On the facts and circumstances of the case, the order passed by the learned CIT(A) u/s 147 read with section 144 of the act is bad, both in the eyes of law as well as on facts.

2. (i) *On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in passing the order without giving assessee an opportunity of being heard in violation of principle of natural justice.*

(ii) *That the non-appearance before the ld. CIT(A) was due to reason beyond the control of the assessee.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the application of condonation of delay despite the assessee having sufficient cause for the delay in filing of appeal.*

4. (i) *On the facts and circumstances of the case, ld. CIT(A) has erred both on facts and in law in confirming the addition of Rs. 52,52,000/-, made by A.O. on account of unexplained investments in immovable property without appreciating the facts of the case.*

(ii) *That the addition was made despite any corroborating evidence available on record.*

5. *On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in upholding the initiation of reassessment proceedings u/s 147 of the act as the same was bad in the eyes of law as the procedure prescribed u/s 147 of the has not been complied with.*

6. *On the facts and circumstances of the case, the ld. CIT(A) has erred both on facts and in law in sustaining the best judgment assessment u/s 144 of the act without serving a valid notice u/s 148 of the act onto the appellant and without providing sufficient providing to the appellant to present its case.*

7. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in sustaining the reopening of assessment proceedings u/s 147 of the act as the same was made by forming reasons to believe without independent application of his mind.*

8. *On the facts and circumstances of the case, the ld. CIT(A) has erred both on facts and in law in sustaining the reopening of assessment*

proceedings u/s 147 of the Income Tax Act, 1961 without having valid reasons to believe that the income has escaped assessment.

9. *On the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the re-opening of assessment proceedings u/s 147 of the act without obtaining necessary approval u/s 151 of the act from the prescribed authority and that it was granted in a mechanical manner.*

10. *On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the assessment of income at Rs. 52,52,000/- as against the returned income of Rs. Nil/-.*

11. *On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in sustaining the addition of Rs. 52,52,000/- made on account of unexplained investment in immovable property without there being any basis for the same.”*

Grounds in ITA No. 7391/Del/2018:

“1. *On the facts and circumstances of the case, the order passed by the learned CIT(A) upholding the levy of penalty by AO u/s 271 (1)(c) of the act is bad, both in the eyes of law as well as on facts.*

2. (i) *On the facts and circumstances of the case, Id. CIT(A) has erred both on facts and in law in passing the order imposing penalty without giving assessee an opportunity of being heard in violation of principle of natural justice.*

(ii) *That the non-appearance before the Id. CIT(A) was due to reason beyond the control of the assessee.*

3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the application of condonation of delay despite the assessee having sufficient cause for the delay in filing of appeal.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the imposition of penalty u/s 271 (1)(c) of the Act of Rs. 16,80,000/- on account of unexplained investments in immovable property without appreciating the facts of the case.*

5. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the imposition of penalty despite the fact that the penalty proceedings were initiated by the AO without giving any findings on the furnishing of inaccurate particulars of income or concealment of income.*

(ii) *That the show causes notice was issued without mentioning the specific charge therein as to whether the penalty is imposed for furnishing of inaccurate particulars of income or for concealment of income.*

6. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in levying penalty u/s 271(1)(c) of the Act ignoring the fact that penalty proceedings are independent of the assessment proceedings.*

(ii) *That the mere disallowance or additions per se cannot be the basis for imposing the penalty u/s 271(1)(c) of the Act.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the fact that the assessee has disclosed all the particulars of income and as such there is neither concealment of income nor furnishing of inaccurate particulars of income."*

2. The brief facts relating to the issue are that in the instant case, the assessment was made u/s. 147 read with section 144 of the IT Act by making an addition of Rs.52,52,000/- as unexplained investment in purchase of property because the assessee did not appear before the Assessing Officer to get the AIR information received with respect thereto verified. Based on this addition, a penalty of Rs.16,80,000/- was also imposed against the assessee u/s. 271(1)(c) of the IT Act. The assessee carried the matter in appeal before the Id. CIT(A), where also the assessee did not appear. However, both the appeals were dismissed by the Id. CIT(A) as defective being barred by limitation by 3 months observing that the assessee did not appear to offer proper explanation for condonation of delay.

3. We have heard both the parties and have gone through the material available on record. The contention of the assessee at outset has been that no proper notice u/s. 148 was served upon the assessee and the assessee could also not appear before the ld. CIT(A) due to the reason beyond his control. It was also submitted that the ld. CIT(A) while rejecting the appeals as defective did not consider the reason for delay in right perspective. The ld. AR, therefore, submitted that the assessee, may be given one more opportunity of being heard to substantiate the reason for delay in filing the appeals and to put up its cases on merits. The ld. DR, though relied on the impugned orders, but did not object to the request of the assessee for providing him one more opportunity of being heard. In presence of these facts, we think it appropriate in the interest of natural justice that the assessee should be given reasonable opportunity of being heard so as to substantiate its reasons for delay and to put up its cases on merits before the ld. CIT(A). Accordingly, both the appeals are restored back to the file of ld. CIT(A) for deciding them afresh after giving reasonable opportunity of being heard to the assessee.

4. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on 27.03.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 27.03.2019

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