

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

Before Sh. N. S. Saini, Accountant Member

ITA No. 6609/Del/2018 : Asstt. Year : 2013-14

Salman, C/o Vinod Kumar Goel, 282, Boundary Road, Civil Lines, Meerut, Uttar Pradesh	Vs	Income Tax Officer, Ward-3(5), Hapur Uttar Pradesh
(APPELLANT)		(RESPONDENT)
PAN No. DVXPS5131K		

**Assessee by : Sh. Vinod Kumar Goel, CA
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 04.04.2019	Date of Pronouncement:05.04.2019
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ORDER

This is an appeal filed by the assessee against the order of CIT(A), Ghaziabad dated 31.08.2018.

2. The assessee has raised following grounds of appeal:

"1. That Ld. C.I.T (A) Ghaziabad ignore the fact that the order U/s 144/147 for the A.Y 2013-14 receive the assessee 07/06/2017 as original order was received by the assessee on request of the assessee on 07/06/2017. The assessee explained this fact to the A.O on 21/08/2018 along with application dated 07/06/2017. Therefore C.I.T (A) ignore the fact that the appeal filed by the assessee within time.

2. That due the error on the name of the father all notice U/s 147, 142(1), 144 are returned back to the A.O. Even assessment order 23-11-2016 was also returned back to the A.O. Hence entire proceeding of assessment U/s 144/147, without assessing the notice is bad in law and against the principal of natural justice.

3. That A.O is in error to assess the income U/s 144/147 at Rs. 49,96,803/- without going through withdrawal and nature of the business and C.I.T (A) without merit of the

case. Hence, both the authority passed the order against principal of natural justice.

4. That the assessee has right to add, modify or delete any ground during appeal proceeding."

3. The Authorized Representative of the assessee submitted that the appeal of the assessee was dismissed by the Commissioner of Income Tax (Appeals) on the ground that the reasons given for filing the appeal belated by more than five months were not accepted by him on the ground that the assessee has not filed any evidence in support of his contention of not having received order of the Assessing Officer passed u/s 144/147 of the Act.

4. He submitted that since the assessment order was not received, therefore, the assessee requested the Assessing Officer for providing certified copy and after receiving the same, the assessee filed the appeal before the Commissioner of Income Tax (Appeals) which was within the time prescribed under the Act. Therefore, the dismissal of the appeal of the assessee by the Commissioner of Income Tax (Appeals) was not justified.

5. On the other hand, the Departmental Representative supported the order of the Commissioner of Income Tax (Appeals).

6. After considering the rival submissions and perusing the materials on record, I find that the assessee claimed before the Commissioner of Income Tax (Appeals) that copy of assessment order passed u/s 144/147 of the Act was not received by him and the Commissioner of Income Tax (Appeals) has not accepted the same in absence of any evidence to support the contention of the assessee. I find that the Commissioner of Income Tax (Appeals) has not stated in his order what evidence the

assessee should have filed before him for the contention of not non-receipt of order of the Assessing Officer. The assessee after obtaining certified copy of the order from the Assessing Officer has filed appeal before him. Hence, in this above circumstances, the Commissioner of Income Tax (Appeals) was not justified in dismissing the appeal of the assessee. I, therefore, set aside the order of the Commissioner of Income Tax (Appeals) and remand the matter back to the file of the CIT(A) to adjudicate the appeal of the assessee afresh after allowing reasonable and proper opportunity of hearing to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Open Court on 05/04/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 05/04/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR