

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'SMC', NEW DELHI

BEFORE SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No. 2209 & 2210/Del/2019

AY: 2008-09 & 2009-10

Sh. Devendra Kumar Mavi C/o Prakash Lega Advisor UG – 82, WTC Barakhamba Road New Delhi 110 001 PAN: BLRPK7642B	vs.	ITO, Ward 1(2) New Delhi
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**(Appellant)**

**(Respondent)**

**Assessee by :** : Sh. Pankaj Garg, Adv. &  
Sh. Milind Garg, Adv.  
**Department by** : Sh. S.L.Anuragi, Sr.D.R.

**Date of Hearing :** 23/05/2019  
**Date of Pronouncement:** 24/05/2019

**ORDER**

These two appeals has been filed by assessee against the separate orders of Ld.CIT(A) dated 22.02.2018 and 12.3.2018 respectively pertaining to A.Ys 2008-09 and 2009-10.

2. The appeals involve similar issues and were heard together, therefore, for the sake of convenience, a common and consolidated order is being passed.

3. At the outset the Ld.AR invited our attention to the fact that there was a delay in filing the appeals of 289 days which had occurred due to the fact that the Notices were issued to the

assessee at his address in Village, where as he has been filing the returns of income in Delhi. It was submitted that the assessee has filed duly signed and notarised affidavit and application for condonation of delay and my attention was invited to the contents of the application and the affidavit, therefore it was prayed that the delay may be condoned and the assessee be heard on merits.

4. The Ld.Sr.D.R. objected to the condonation of delay application and submitted that the Notices were correctly issued at the address mentioned in PAN. However, I find that the Ld.CIT(A) issued Notices to the address in the Village of the assessee, falling under the jurisdiction of Ghaziabad whereas the assessee has been continuously filing his returns of income at his address in Delhi. Therefore, I deem it appropriate to condone the delay and Ld.Counsel was asked to proceed with his arguments on merits.

5. The Ld.AR stated that the assessee has taken legal issues wherein he had challenged the reopening of the cases u/s 148 but he is withdrawing the same and will not be pressing the same for adjudication.

5.1. As regards the merits of the case the Ld.Counsel submitted that A.O. has made the additions on the basis of bank deposits and has ignored the withdrawals made by assessee during the same period. It was argued that the A.O. should have allowed benefit of peak credit or should have allowed the withdrawals from the bank for considering the same as explained sources for deposits on the subsequent dates. I find force in the argument of Ld.AR that the A.O. should have considered the withdrawals from the bank for

considering the deposits on the subsequent dates. Therefore I remit the cases back to A.O. to re-calculate the addition if any, after taking into account the withdrawals from the respective bank accounts. Needless to say that assessee will be afforded sufficient opportunity of being heard.

7. In view of the above, the appeals filed by assessee are partly allowed for statistical purposes.

Order pronounced in Open Court.

Sd/-

**(T.S.KAPOOR)**  
**ACCOUNTANT MEMBER**

Dated: 24th May, 2019.

*\*Gmv*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	<i>Date</i>
<i>Draft dictated</i>	<i>23.05.19</i>
<i>Draft placed before author</i>	<i>23.05.19</i>
<i>Draft proposed &amp; placed before the second member</i>	
<i>Draft discussed/approved by Second Member.</i>	
<i>Approved Draft comes to the Sr.PS/PS</i>	
<i>Kept for pronouncement on &amp; Order uploaded on :</i>	<i>23.05.19</i>
<i>File sent to the Bench Clerk</i>	
<i>Date on which file goes to the AR</i>	
<i>Date on which file goes to the Head Clerk.</i>	
<i>Date of dispatch of Order.</i>	