

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

Before Sh. T. S. Kapoor, Accountant Member

ITA No. 5291/Del/2018 : Asstt. Year : 2009-10

Ashok Kumar, S/o Sukhbir Singh, Vill Mehrauli, Post Kavi Nagar, Ghaziabad, Uttar Pradesh-201002	Vs	Income Tax Officer, Ward-1(1), Ghaziabad-201002
(APPELLANT)		(RESPONDENT)
PAN No. ALXPK7744H		

**Assessee by : Sh. Ashok Kumar, Assessee
Revenue by : Sh. S. L. Anuragi, Sr. DR**

Date of Hearing: 28.05.2019	Date of Pronouncement: 31.05.2019
------------------------------------	--

ORDER

This is an appeal filed by assessee against the order of Commissioner of Income Tax (Appeals), Ghaziabad dated 31.05.2018 sustaining the penalty of Rs.10,000/- which the Assessing Officer had imposed u/s 271(1)(b) of the Act.

2. The assessee appeared himself and stated that he is living in a village where the notices issued by Assessing Officer were not received and therefore, the assessee could not appear. The assessee further stated that he had verified the assessment record on 08.05.2018 and from the assessment records he found that envelopes containing notices u/s 148 of the Act were unserved and were placed in the assessment record itself and therefore, it was prayed that failure on the part of assessee had a sufficient cause as the assessee was not aware of the notices.

3. The Id. Departmental Representative, on the other hand, relied on the order of authorities below.

4. I have heard the rival parties and have gone through the material placed on record. I find that Id. CIT(A) has noted in his order that notices were found to be duly served as per India Post Tracker but later on returned as un claimed and therefore, he presumed that notices issued by Assessing Officer were refused by the appellant and therefore, he held that there was no reasonable cause for not attending the assessment proceedings before the Assessing Officer. I find that on the one hand, the Id. CIT(A) is mentioning that notices were found to be duly served and in the next line he says that these were returned as un claimed. These are contrary findings of Id. CIT(A) and are based upon assumptions only. The assessee on 08.05.2018, has claimed to have inspected the assessment files and had found the undelivered notices laying therein and Id. DR was not able to deny this. Therefore, I hold that there was sufficient cause for not attending the assessment proceedings and therefore, the penalty sustained by Id. CIT(A) is deleted.

5. In the result, the appeal of the assessee is allowed.

(Order pronounced in the Court on 31st day of May, 2019 at New Delhi)

Sd/-
(T. S. Kapoor)
Accountant Member

Dated: 31/05/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR