

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.3386/Del./2017
Assessment Year 2012-2013

Mohd. Azaz Khan, B-31, DDA Colony, New Zafrabad, Delhi – 110032 PAN AOYPK6951L	vs.,	The Income Tax Officer, Ward – 57 (1), Room No.5, D-Block, Vikas Bhawan, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Mansi Jain, C.A.
For Revenue :	Ms. Rinku Singh, Sr. D.R.

Date of Hearing :	08.07.2019
Date of Pronouncement :	08.07.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-37, New Delhi, Dated 01.05.2017, for the A.Y. 2012-2013.

2. We have heard the Learned Representative of both the parties and perused the findings of the authorities below.

3. In this case, the A.O. passed the assessment order Dated 30.12.2016 making addition of Rs.50 lakhs. The assessee challenged the addition before the Ld. CIT(A). The Ld. CIT(A) noted that the appeal is transferred to him by order of the competent authority and it was found that there is a delay in filing the appeal, however, no application for condonation of delay supported by affidavit and evidences have been filed. Notice/letter dated 17.04.2017 was issued to the assessee, which according to the Ld. CIT(A) was served upon the assessee on 22.04.2017. In the absence of any application for condonation of delay, appeal of the assessee were dismissed, considering it to be time barred.

4. Learned Counsel for the Assessee submitted that no notice have been served upon the assessee. The impugned order shows only one notice have been issued which was not served upon the assessee. Since there were no compliance, she has submitted that matter may be remanded to the Ld. CIT(A) for disposal of the appeal afresh.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. After considering the rival submissions, we are of the view that the appeal of the assessee requires reconsideration at the level of the Ld. CIT(A). In this case, copy of Form-35 is filed on record in which in Column-15, assessee has explained that assessee was highly ill and was completely at bed rest and hence, there was a delay. The assessee requested for condonation of delay in filing the appeal. The explanation of assessee has not been considered by the Ld. CIT(A). Further, it has not been brought on record whether notice dated 17.04.2017 asking the assessee to file application for condonation of delay has been served upon the assessee or not. In the absence of any documents on record of service of the notice, Learned Counsel for the Assessee rightly contended that no notice have been served upon the assessee for hearing of the appeal. The impugned order, therefore, suffers in law and is clearly violative of principles of natural justice. We, accordingly, set aside the impugned order and restore the appeal of assessee to the file of Ld. CIT(A) with a direction to re-decide the appeal of assessee as per Law, by giving

reasonable, sufficient opportunity of being heard to the assessee.

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

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 08th July, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.