

IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'SMC' : NEW DELHI)  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
ITA NO. 6441/DEL/2018  
(A.Y. 2014-15)

DEEPA CHAUHAN, C/O C.S. ANAND & CO., 104, PANKAJ TOWER, 10-LSC, SAVITA VIHAR, NEW DELHI - 92 (PAN : AFIPC8922J)	VS.	ITO, WARD 1(2), GHAZIABAD
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Assessee By	SH. C.S. ANAND, ADV.
Revenue By	SH. S.L. ANURAGI, SR. DR.

**ORDER**

Assessee has filed this appeal against the impugned order dated 27.3.2018 passed by Ld. CIT(A), Ghaziabad on the following grounds:-

"1. That on the peculiar facts of the case and under the law, the Id. CIT(A) Ghaziabad had erred in holding that "there is no need to pass an order u/s 127".

*The ITO, Ward-35(3) New Delhi had transferred the assessment folder to the ITO, Ward-1 (2) Ghaziabad on his own, without support of the order u/s 127 which was required to be passed by the Ld. PCIT, Delhi-12, New Delhi.*

2. That on the peculiar facts of the case and under the law, the Id. CIT(A) Ghaziabad has erred in holding that the grounds of appeal raised by the assessee apropos jurisdiction, are not maintainable.

*On getting the notice dt. 22.09.2015 issued by the ITO, Ward-1(2) Ghaziabad u/s 143(2) in the name of Deepak Chauhan-PAN: AIMPk3941L, the assessee had instructed CA Vinesh Maheshwari to meet the ITO, Ward-1 (2) Ghaziabad and apprise him that the said notice did not belong to her.*

*When CA Vinesh Maheshwari had apprised such facts, the ITO, Ward-1(2) Ghaziabad had then & there verified that PAN:AIMPK3941L belonged to Tajinder Kaur and then assured him that he shall be closing the matter.*

3. That the assessment order passed by the Ld. ITO Ward 1(2) Ghaziabad is liable to be annulled, because no valid notice u/s 143(2) in the name of the assessee was reached into the hands of the assessee.

4. That the assessment order passed by the Id. ITO Ward 1(2) Ghaziabad is liable to be annulled, because the Id. ITO Ward 1(2) Ghaziabad had not specified as to whether he is passing the assessment order u/s 144 or u/s 143(3).

*The Ld. CIT(A) had not adjudicated this ground of appeal.*

5. That on the facts of the case and under the law, the addition of Rs. 37,36,681/- made by the Id. ITa ward 1(2) Ghaziabad deserves to be deleted firstly because no particular provision of IT Act 1961 was mentioned by the Ld. ITO, Ward-1(2) Ghaziabad, and secondly because it was not the money of the assessee.

NOTE:

The assessee craves leave to amend/ modify aforementioned grounds of appeal and/or to raise additional ground(s) of appeal, at any time during the course of appellate proceedings.

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing Ld. Counsel for the assessee has reiterated the contents of the Application for Condonation of Delay, which are reproduced as under:-

*"Sub: Application for "Condonation of Delay".*

*It is respectfully submitted that the assessee had filed an appeal against the assessment order dt. 28.12.2016 [passed by the Id. ITO, Ward- 1(2), Ghaziabad] in the office of the Id. CIT(A)- Ghaziabad on 25.01.2017.*

*The appellate proceedings were attended by the assessee's counsel, who had not only filed a sheet containing the Revised Grounds of Appeal but also made elaborate submissions as well as Rejoinder w.r.t. the Id. A.O.'s Remand Report.*

*That on receiving a letter dt. 30.05.2018 from the ITO, Ward-1(2) Ghaziabad containing subject "Reminder Show Cause Notice u/s 271(1)(c) of the IT Act 1961 - A.Y. 2014-15-Regarding", the assessee had noticed that there was a reference of the appellate order dt. 27.03.2018. Thereafter vide letter dt. 08.06.2018 (filed on 12.06.2018), the assessee had requested the Id. CIT(A) Ghaziabad to serve the said appellate order upon her.*

*That on the instructions of the Id. CIT(A) Ghaziabad, the assessee had deposited Rs. 500/- on 04.07.2018. Thereafter vide letter dt. 05.07.2018, the assessee had provided the proof of payment of Rs. 500/- and once again requested the Id. CIT(A) Ghaziabad to supply the said appellate order.*

*That after taking the authorization letter of the assessee in favour of Sh. Kamal Kant, the office of the Id. CIT(A) Ghaziabad had handed over the appellate order (which was lying in original in the appeal folder maintained by them) to the said Sh. Kamal Kant (for & on behalf of the assessee) on 30.07.2018.*

*That since the assessee was not having the proof of date of service of the order of the Id CIT(A) Ghaziabad, the assessee had moved a letter in the office of the Id.CIT(A) Ghaziabad on 18.09.2018 (copy enclosed) requesting the Id CIT(A) Ghaziabad to provide her proof that the appellate order was handed over on 30.07.2018. Despite repeated visits to the office of the Id CIT(A) Ghaziabad for obtaining such proof, the assessee could not obtain the same.*

*That to avoid any further delay in filing of appeal before the Hon'ble ITAT, New Delhi, the assessee is hereby filing the appeal now. In this process in advertent delay of few days has occurred.*

*That the assessee is hereby moving this formal application seeking condonation of delay in filling the appeal.*

*In view of the above stated facts, circumstances and the submissions, this Hon'ble Bench is requested to kindly condone the inadvertent delay of few days.*

*Submitted."*

3.1 Further, Ld. Counsel for the assessee has filed a letter dated 8.4.2019 of the assessee seeking permission for raising an additional ground of appeal, which read as under:-

*"Sub: Letter seeking permission for raising an additional ground of appeal*

*It is respectfully submitted that against the order dt. 27.03.2018, passed by the Ld CIT(A) Ghaziabad in her case for A.Y. 2014-15, the assessee had filed an appeal on prescribed Form 36 before this estimated institution on 08.10.2018. Vide Form 36 read with its enclosure, being the*

*sheet containing the Grounds of Appeal, the assessee had raised 5 Grounds of Appeal.*

*While preparing the appeal, it has been recently noticed that the Id CIT(A) had not adjudicated the Revised Grounds of Appeal (which were raised by the assessee vide letter dt. 13.11.2017 (copy enclosed). A perusal of top para on page 4 of the impugned order reveals that the Id CIT(A) had recorded as under:-*

*"During the course of appellate proceedings appellant revised the grounds which were not duly signed by the appellant vide dt. 13.11.2017 thus revised grounds are not being adjudicated".*

*In this context, it is worth pointing out here that (i) the Id. CIT(A) had herself sent the letter containing the Revised Grounds of Appeal to the Ld A.O. for his comments; (ii) the assessee had made submissions in the light of the Revised Grounds of Appeal; and (iii) the Id A. O. had submitted his report on the Revised Grounds of Appeal and the written submissions made by the assessee.*

*It is respectfully stated that while preparing the Grounds of Appeal as per Form 36, such vital fact had inadvertently gone unnoticed by the assessee. The assessee is hereby seeking permission of this Hon'ble Court to raise an additional grounds of appeal, as under:-*

*That on the facts of the case, the Id CIT(A) has erred in not adjudicating the Revised Grounds of Appeal, on the incorrect finding of fact that the Revised Grounds of Appeal were not signed by the assessee This Hon'ble Courts is requested to kindly admit this additional Grounds of Appeal."*

*This Hon'ble Courts is requested to kindly admit this additional grounds of appeal.*

3.2 In view of above, he requested to admit the aforesaid additional ground and also requested to direct the Ld. CIT(A) to decide the revised grounds of appeal first which were legal in nature, raised before the Ld. CIT(A) vide signed letter dated 13.11.2017, however, the same were not adjudicated by him in his appellate order. Therefore, he requested that the said revised grounds in dispute may be set aside to the file of the Ld.

CIT(A) with the directions to decide the same afresh, after giving adequate opportunity of being heard to the assessee. In support of his contention, the Assessee has also filed an Affidavit.

4. On the contrary, Ld. DR has not raised any serious objection on the request of the Ld. Counsel for the assessee. He also relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records especially the application for condonation of delay in filing the appeal; impugned order passed by the Ld. First Appellate Authority; letter dated 13.11.2017 addressed to the Ld. CIT(A) seeking modification of grounds of appeal and the letter dated 8.4.2019 seeking permission for raising an additional ground of appeal and the Affidavit of the Assessee. I am of the considered view that in view of the decision of the Hon'ble Supreme Court of India in the case of NTPC Limited 229 ITR 383, the additional ground raised by the assessee is purely legal ground and did not require fresh facts which is to be investigated and goes to the root of the matter. In the interest of justice, I admit the following additional ground and set aside to the file of the Ld. CIT(A) to decide the same in accordance with law, after giving adequate opportunity of being heard to the assessee.

*"That on the facts of the case, the Ld CIT(A) has erred in not adjudicating the Revised Grounds of Appeal, on the incorrect finding of fact that the Revised Grounds of Appeal were not signed by the assessee. This Hon'ble Courts is requested to kindly admit this additional Grounds of Appeal."*

5.1 I further find that while deciding the appeal, Ld. CIT(A) has not adjudicated the revised grounds of appeal which were raised by the assessee vide letter dated 13.11.2017, a copy thereof was also produced during the hearing, which are reproduced as under:-

*"BEFORE THE COMMISSIONER INCOME TAX (APPEAL), GHAZIABAD*

*In re: Deepa Chauhan*

C/o Arunketan & Associates  
101 CSC DDA Market,  
Pushpanjali, Delhi – 110 092  
PAN: AFIPC8922J

A.Y.: 2014-15

REF: Appeal against Assessment  
order dated 28.12.2016 passed  
u/s. 144/143(3).

Sub:- Application seeking modification  
of grounds of appeal.

Madam,

*It is respectfully submitted that the assessee had filed an appeal against the assessment order dated 28.12.2016, which was passed u/s 144/143(3) by the Id. ITO ward 1(2) Ghaziabad. At the time of filing appeal on Form No. 35, the assessee had raised few grounds of appeal on her own. The assessee had later on come in contact with an experienced professional. with whom the matter relating to appeal was discussed. As per his advice, the grounds of appeal raised originally needs to be revised. Accordingly, the assessee is hereby seeking your honour's permission to revise those grounds of appeal as under:*

*Revised Grounds of Appeal*

- 1. That the assessment order passed by the Id. ITO Ward 1(2) Ghaziabad is liable to be annulled, because no valid notice u/s 143(2) in the name of the assessee was issued and served upon the assessee, within the prescribed time limit.*
- 2. That the assessment order passed by the Ld. ITO Ward 1(2) Ghaziabad is liable to be annulled because the Ld. ITO Ward 1(2) Ghaziabad had illegally assumed jurisdiction to make assessment in the case of the assessee for AY 2014-15, in the absence of an order u/s 127 (which was required to be passed by the Id. Pro CIT Delhi-12, New Delhi).*
- 3. That the assessment order passed by the Id. ITO Ward 1(2) Ghaziabad is liable to be quashed, because while passing the assessment order the Id. ITO Ward 1(2) Ghaziabad had not specified the particular section of the IT Act, 1961.*

*WITHOUT PREJUDICE*

4. *That on the facts of the case and under the law, the addition of Rs. 37,36,681/- made by the Id. ITO ward 1(2) Ghaziabad deserves to be deleted. In any case, the addition made at Rs. 37,36,681/- is highly excessive."*

5.2 After going through the Revised Grounds of appeal dated 13.11.2017, as aforesaid, filed by the Assessee before the Ld. CIT(A), I find that it has been signed by the Assessee, but the Ld. CIT(A) has wrongly rejected the same on a technical ground and did not adjudicate the same. Therefore, in the interest of justice, I am accepting the appeal of the assessee for statistical purposes by issuing the directions to the Ld. CIT(A) to decide the aforesaid additional ground as well as revised grounds of appeal raised before the Ld. CIT(A) vide letter dated 13.11.2017, after giving adequate opportunity of being heard to the assessee.

6. In the result, the Appeal of the Assessee is allowed for statistical purposes.

Order pronounced on this 23<sup>RD</sup> day of July, 2019.

**Sd/-**

**(H.S. SIDHU)  
JUDICIAL MEMBER**

Dated the 23<sup>rd</sup> day of July, 2019  
SRB

Copy forwarded to:-

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

AR, ITAT