

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA NO. 999/DEL/2017  
Assessment Year: 2009-10**

Shri Chetan Seth, Plot No. 14, LCS, Sector B-1, Vasant Kunj, New Delhi-110070	<b>vs</b>	Income Tax officer, Ward-15(3), New Delhi.
Appellant		Respondent

**Assessee by: Shri Vibhu Gupta, CA  
Ms Deepashree Rao, CA  
Department by: Shri G. Johnson, Sr. DR**

**Date of hearing : 31.07.2019  
Date of pronouncement : 31.07.2019**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal has been preferred by the assessee against the order of the ld. Commissioner of Income Tax(A)-36, New Delhi dated 28.12.2016 and pertains to assessment year 2009-10.

2.0 At the outset, the ld. AR submitted that the appeal of the assessee had been dismissed by the ld. Commissioner of Income Tax(A) *in limine* without adjudicating the appeal on merits and without condoning the delay which had occurred due to unavoidable circumstances at the time of filing of the appeal before the ld. First Appellate Authority. The ld. AR submitted

that the appeal before the ld. Commissioner of Income Tax(A) was delayed by 1265 days for the reason that Mr. Amitabh Lumba, an employee of the assessee, who was working in the capacity of Assistant Manager and who used to look after the income tax matters of the assessee, was suffering from prolonged illness right from the year 2011 due to which he was repeatedly being admitted to the hospital for treatment. It was submitted that due to this, the filing of the appeal before the First Appellate Authority got inordinately delayed. It was submitted that Mr. Amitabh Lumba subsequently passed away on 3.12.2013 and the relevant papers remained in the file of the employee and could be traced only at a later date. The ld. AR submitted that the assessee had no reason to delay the filing of the appeal as his valuable right would have been affected. It was also submitted that the reasons as aforesaid were beyond the control of the assessee and, therefore, the ld. Commissioner of Income Tax(A) should have condoned the delay and adjudicated the appeal on the merits of the case. The ld. AR also filed an affidavit in this regard narrating the events as aforementioned.

2.1 Ld. Sr. DR justified the action of the ld. Commissioner of Income Tax(A) in not condoning the appeal.

2.2 We have heard the rival submissions and perused the material available on record. In view of the circumstances as narrated by the ld. AR which have also been incorporated by the ld. Commissioner of Income Tax(A) in the impugned order, it is our considered opinion that the assessee had a *bonafide* case for not filing the appeal before the ld. Commissioner of Income Tax(A) in time. We also note that the assessee would not have gained in any manner whatsoever by delaying the filing of appeal. We also feel that the ld. Commissioner of Income Tax(A) should have condoned the delay in the interest of substantial justice. Accordingly, we restore the appeal to the file of the ld. Commissioner of Income Tax(A) with a direction to condone the delay, admit the appeal and decide in accordance with law after giving due opportunity to the assessee to present its case.

3. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 31<sup>st</sup> July, 2019.

**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: JULY, 2019  
'GS'

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- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	