

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

I.T.A. Nos. 5778 & 5779/DEL/2016		
A.Y. : 2009-10		
ADITYA AGARWAL, H.NO. A-604, SHRI BALAJI RESIDENCY, PLOT NO. 9, AHINSA KHAND-2, INDRAPURAM, GHAZIABAD (PAN: AEDPA5943D)	VS.	ITO, WARD 1(5), GHAZIABAD
(APPELLANT)		(RESPONDENT)

Assessee by : Shri Gagan Kumar & Ms. Mohita,
Advocates
Department by : Sh. Anil Kumar Sharma, Sr. DR.

ORDER

PER H.S. SIDHU, JM

These appeals by the Assessee are directed against the Orders dated 30.08.2016 and 31.08.2016 of the Ld. Commissioner of Income Tax (Appeals), Ghaziabad pertaining to assessment year 2009-10 in respect of quantum appeal as well as penalty appeal respectively. For the sake of convenience, we are first dealing with Quantum appeal being ITA No. 5778/Del/2016 (AY 2009-10).

2. The following are the amended grounds of appeal raised in ITA No. 5778/Del/2016 (AY 2009-10):-

1. That the impugned order under section 250 of the Act dated 30.8.2016 passed by the CIT(A) is erroneous and bad in law.

2. That the Ld. CIT(A) erred in arbitrarily and mechanically rejecting the additional evidence adduced before it by the Appellant under Rule 46A of the Income Tax Rules, 1962.
3. That the Ld. CIT(A) has erred in law by confirming the addition of Rs. 8,44,750/- made by the AO under section 69 of the Act.
4. That the Ld. CIT(A) has erred in law by confirming the disallowance of Rs. 40,500/- on account of interest on housing loan.
5. That having regard to the facts and circumstances of the case, the Ld. CIT(A) erred in law and on facts by not reversing the action of the AO in charging an interest under section 234B of the Act.
6. That the appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.
7. That all the above grounds are without prejudice to each other.

3. The following are the amended grounds of appeal raised in ITA No. 5779/Del/2016 (AY 2009-10):-

1. That the impugned order under section 250 of the Act dated 31.8.2016 passed by the CIT(A) is erroneous and bad in law.
2. That the Ld. CIT(A) has erred in confirming the penalty u/s. 271(1)(b) of the Act of Rs. 10,000/- levied on the

assessee without considering and appreciating the facts and circumstances of the case.

3. That the Ld. CIT(A) has grossly erred in confirming the levy of penalty under section 271(1)(b) amounting to Rs. 10,000/- without appreciating the fact that the appellant had a reasonable cause preventing it from complying with the statutory notices.
4. That the appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.
5. That all the above grounds are without prejudice to each other.

4. 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.

5. At the time of hearing, Ld. Counsel for the assessee stated that there is a delay of 05 days in filing the appeal before the Tribunal, for which the assessee has filed the Application dated 09.11.2016 stating therein that *"The appeal could be filed upto 04.11.2016. We prepared the appeal and handed over to our clerk to do the rest. There were holidays on 30.10.2016 and 01.11.2016 in our Office (Diwali, Govardhan & Bhai Duj). Meanwhile he fell ill so he could not file the appeal. Thus the mistake was occurred in the counsel's office and assessee should not be penalized. So we are presenting the same on 09.11.2016. Keeping the above in view you are requested to condone the delay of 05 days from 05.11.2016 to 09.11.2016 & oblige."*

5.1 Ld. DR has not raised any objection on condoning the delay.

5.2 We have heard both the parties and perused the records, especially the application for condonation of delay, we are of the considered view that the delay of 05 days in filing the appeal before the Tribunal has reasonable cause, hence, the delay in dispute is condoned.

6. During the hearing, Ld. Counsel for the assessee has only argued ground no. 2 raised in the amended grounds of appeal and stated that Ld. CIT(A) wrongly rejected the additional evidences adduced before him by the assessee under Rule 46A of the I.T. Rules, 1962 which are very essential for adjudicating the issues in dispute. He has also draw our attention towards Page no. 40-42 of the Paper Book which is a request letter dated 23.08.2016 for admission of additional evidences filed before the Ld. CIT(A) and a copy of Certificate, confirming therein that Sh. Subhash Chandra Agarwal S/o Sh. Ramshah Agarwal given loan of Rs. 3 lacs to Sh. Aditya Agarwal, S/o Sh. Subhash Chandra Aggarwal vide cheque no./cash 4142 76 dated 5.8.216 of Bank of Baroda, who is having PAN: ABTPA5193Q and requested that these additional evidences may be admitted and the issues in dispute may be remitted back to the file of the Assessing Officer with the directions to adjudicate the same, afresh, after giving adequate opportunity of being heard to the assessee.

6.1 Ld. DR has not raised any objection on the request of the Ld. Counsel for the assessee.

7. We have heard both the parties and perused the records especially the impugned order as well as Page No. 40-42 of the Paper Book which is a request letter dated 23.08.2016 for admission of additional evidences under Rule 46A of the I.T. Rules, 1962 and a copy of Certificate, filed by the Assessee before the Ld. CIT(A). We are of the considered view that in the interest of justice the additional evidences filed by the Assessee before the Ld. CIT(A) under Rule 46A of the I.T. Rules, 1962, are very much essential to adjudicate the issues in dispute for substantiating the claim of the assessee. Therefore, in the interest of justice, we admit the

aforesaid additional evidences filed under Rule 46A of the I.T. Rules, 1962 before the Ld. CIT(A) and remit back the issues in dispute to the file of the Assessing Officer with the directions to thoroughly examine / enquire the same and decide the issues in dispute, afresh, as per law, after giving adequate opportunity of being heard to the assessee as a result thereof the appeal of the assessee is allowed for statistical purposes.

8. As regards penalty appeal being ITA No. 5779/Del/2016 (AY 2009-10) is concerned, the same has not been pressed by the Ld. Counsel for the assessee before the Bench, hence, the same is dismissed as such.

9. In the result, the Quantum Appeal NO. 5778/Del/2016 (AY 2009-10) filed by the Assessee stands allowed for statistical purposes and Penalty Appeal No. 5779/Del/2016 (AY 2009-10) stands dismissed in the aforesaid manner.

Order pronounced on 02/09/2019.

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 02.09.2019

“SRB”

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi