

आयकर अपीलिय अधिकरण दिल्ली न्यायपीठ "बी" नई दिल्ली में

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री बी आर आर कुमार, लेखा सदस्य के समक्ष

**BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER &
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं / ITA Nos:- 4264 & 4265/Del/2019

निर्धारण वर्ष / Assessment Year: 2008-09

Sh. Fateh Singh L/H of Late

Sh. Dharamveer C/o Krishna

Sarees, H. No. 41, HIG, Abhay

Khand-1st Indirapuram,

Ghaziabad

PAN-ASLPS4158C

.....अपीलार्थी / Appellant

vs

ITO, Ward-1(2),

Ghaziabad

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Somil Agarwal, Adv &
Sh. Rakesh Gupta, Adv

प्रत्यर्थी की ओर से / Respondent by :Ms. Ashima Neb, Sr. DR

सुनवाई की तारीख / Date of Hearing : 30.09.2019	घोषणा की तारीख / Date of Pronouncement: 04.10.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Out of this bunch of appeals, appeal in ITA No. 4264/Del/2019 has been filed against the order of CIT(A) dated 31.03.2019 relevant to Assessment Year 2008-09 against the order passed under section 147 read with section 144 of the Act. Further the appeal in ITA No.

4265/Del/2019 is passed against the order of CIT(A) dated 29.03.2019 relating to Assessment Year 2008-09 against penalty levied under section 271(1)(c) of the Act.

2. Both these appeals relating to the same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee has raised the following grounds of appeal which read as under:-

1. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal in limine on the ground that there was delay in filing appeal whereas there was no delay.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in treating the appeal as non-est and has further erred in recording the following:-*
 - (a) *That reply dated 07-03-2019 was unauthorized reply.*
 - (b) *That the demand notice was served on 16-06-2016.*
 - (c) *That there was no evidence that Sh. Fateh Singh was the legal heir.*
3. *That in any case and in any view of the matter, action of Ld. CIT(A) in dismissing the appeal in limine, is bad in law and against the facts and circumstances of the case.*
4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deciding the case on merits and without considering the various grounds of appeal raised with the appeal memo and more particularly when written submissions and paper book filed by the assessee.”*

4. The assessee in both the appeals is aggrieved by the dismissal of the appeal by the CIT(A) in limine that there was delay in filing the appeal late before him and also treating the appeal as nonest.

5. Briefly in the facts of the case, the assessment order under section 144/147 of the Act was passed on 31.03.2016. The assessee

demised on 14.09.2016. The legal heirs of the assessee claimed that the said assessment order was not served in time, but were served after the legal heirs applied for certified copies, which was given on 26.09.2017. The appeal was filed before the CIT(A) on 18.10.2017 i.e. within the period of 30 days from the date of receipt of certified copies. The CIT(A) was of the view that the demand notice was duly served upon the assessee on 15.06.2016 through affixture by the Income Tax Inspector. The assessee strongly objects to the same. The appeal of the assessee for the aforesaid reason was dismissed in limine. Further the CIT(A) has also noted that there was no evidence to the fact that Shri Fateh Singh was the legal heir and no document to establish his identity was furnished. He also noted the fact that during assessment proceedings Shri Ramprakash son of assessee had attended the proceedings. The CIT(A) thus dismissed the appeal as nonest. Similarly the appeal of assessee against the order levying penalty u/s 271(1)(c) of the Act was dismissed.

6. The assessee is in appeal against the aforesaid order passed by the CIT(A). The learned AR for the assessee strongly objected to the observations of the CIT(A), whereas the learned DR for the Revenue placed strong reliance on the order of the CIT(A).

7. We have heard the rival contentions and perused the record. The first issue which arises in the present appeal is against the order of the

CIT(A) in treating the appeal as nonest and also in dismissing the appeal in limine. The assessment order was passed in the case of Shri Dharamveer Singh on 31.03.2016. The said order was not served upon the assessee who demised on 14.09.2016. The case of the legal heir of the assessee before us is that he was the son of the deceased assessee alongwith his brother Shri. Ramprakash. The status of his being legal heir is also acknowledged by the AO as per the evidence placed at pages 1-1A (English Translation) of the paper book. The appeal before the CIT(A) was electronically verified by the Fateh Singh i.e. son of the deceased assessee. In such circumstances, there is no merit in the order of CIT(A) in observing that Fateh Singh had failed to establish his identity. We reverse the finding of the CIT(A) in this regard.

8. Now coming to the second aspect of the case of CIT(A) that the present appeal has been filed after the delay of about 13 months. The assessee in this regard had made a representation before the CIT(A) that after notice under section 221 was served upon the legal heirs of the assessee, enquiries were made and certified copies of the assessment orders were applied which were handed over on 26.9.2017. The assessee claimed to have filed the appeal within 30 days from the date of receipt of certified copies. The case of Revenue on the other hand is that demand notice was duly served upon the assessee through affixture by an Income Tax Inspector. The present appeal has been filed by the legal heir who received the assessment order on 26.9.2017 and

the appeal thereafter was filed within a period of 30 days. With regard to the penalty order passed under section 271(1)(c) of the Act dated 30.09.2016, the assessee sought information under the Right to Information Act, 2005 and it has been reported that the order dated 30.09.2016 dispatched to the assessee was returned back unserved. The certified copy of the order was provided on 3.10.2017 to the learned AR of the assessee.

9. In such facts and circumstances, we find merit in the plea of the assessee that it had filed the present appeal both in the quantum and the penalty appeals within a period of 30 days from the date of receipt of certified copies of the respective orders. Hence there was no delay in filing the appeal before the CIT(A). Accordingly, we reverse the findings of the CIT(A) in this regard. The issue is remitted back to the file of CIT(A) to decide both the quantum additions and levy of penalty, in accordance with law, after affording reasonable opportunity of hearing to the assessee. The grounds of appeal raised by the assessee are thus allowed.

10. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 04th day of October, 2019.

Sd/-

(B.R.R. KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

दिल्ली / दिनांक Dated : 04th October, 2019.

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

SH

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार,
आयकर अपीलीय अधिकरण ,दिल्ली /
ITAT, Delhi