

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

ITA Nos.1403 & 1404/Del/2019  
Assessment Years: 2009-10

Sh. Aquil Hussain, C/o-VSVG & Co., CAs, 401, CA Chyambars, 18/12, WEA Karol Bagh, New Delhi	<b>Vs.</b>	ITO, Ward-1(1), Noida
<b>PAN :ABHPH4728G</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Gaurav Goyal, CA Shri Vineet Agrawal, CA
Respondent by	Shri Pradeep Singh Gautam, Sr.DR

Date of hearing	18.12.2019
Date of pronouncement	26.12.2019

**ORDER**

**PER H.S. SIDHU, J.M.:**

These two appeals filed by the assessee are directed against two separate orders, each dated 28.09.2018, passed by learned Commissioner of Income Tax (Appeals)-I, Noida, related to quantum of additions and penalty. Since both the appeals related to the same issue, they were heard together and disposed off by

way of this consolidated order. The grounds of appeal raised in ITA No. 1403/Del/2019, are reproduced as under

1- BECAUSE in any view the addition made by the A.O. amounting to Rs.31,50,000 and confirmed by Ld. CIT(A) for genuine investment made in immovable property out of bank loan, as unexplained investment, is on wrong notion, without proper opportunity, illegal and against the facts and law of the case and the assessment order is liable to be quashed.

2- BECAUSE in any view the assessment order passed by A.O. ex-parte and confirmed by Ld. CIT(A) without having jurisdiction on the assessee is arbitrary, illegal and against the facts of the case.

3- BECAUSE in any view the assessment order passed by A.O. ex-parte and confirmed by Ld. CIT(A) without issuing and serving any notice U/s 143(2)/148 to the assessee is arbitrary, illegal and against the facts of the case.

4- BECAUSE in any view the Ld. CIT(A) has erred in deciding the appeal in haste without serving the notice to the appellant and without appreciating the fact that the notice for appeal was received by the appellant after the date of hearing and ignored the speed post receipt evidencing the date of delivery of notice to the appellant.

5- BECAUSE in any view the Ld. CIT(A) has erred in rejecting the appeal as non maintainable U/s 249(2) stating appellant has never requested for condonation of delay, whereas all the facts relating to the delay and request for condonation of delay in filing appeal was made in Form 35 itself and also in the submissions made.

6- BECAUSE in any view the Ld. CIT(A) has erred in rejecting the appeal as non maintainable U/s 249(4)(b) stating appellant has not paid advance tax, whereas entire TDS on his salary income was already paid and this fact was stated in Form 35 itself.

7- BECAUSE in any view the Ld. CIT(A) has erred in deciding the appeal ex-parte without considering all the ground of appeal, since the ground of appeal relating to property purchased out of bank loan was not considered and as such has not passed the speaking order.

8- BECAUSE in any view, and without prejudice to the above grounds, addition made, interest charged and the Assessment Order

*passed are wrong, illegal, without proper opportunity, bad in law and against the facts and law of the case.*

*9- BECAUSE the appellant craves leave to add or alter, any or more ground or grounds of Appeal, at the time of hearing of Appeal.*

**2.** The Grounds of appeal raised in ITA No.1404/Del/2019 are reproduced as under:

*1- BECAUSE in any view the penalty levied by the A.O. amounting to Rs.9,63,050 and confirmed by Ld. CIT(A) for genuine investment made in immovable property out of bank loan, as unexplained investment, is on wrong notion, without proper opportunity, illegal and against the facts and law of the case and the assessment order is liable to be quashed.*

*2- BECAUSE in any view the Ld. CIT(A) has erred in deciding the appeal in haste without serving the notice to the appellant and therefore is without proper opportunity.*

*3- BECAUSE in any view the Ld. CIT(A) has erred in rendering the appeal as non maintainable U/s 249(1) (a) due to non-payment of appeal fees, whereas the appeal fees was paid online and challan of the same was uploaded along with Penalty Order and Notice of demand at the time of filing of appeal and also the details of appeal fees paid was stated in Form 35.*

*4- BECAUSE in any view, and without prejudice to the above grounds, penalty levied and the Order passed are wrong, illegal, without proper opportunity, bad in law and against the facts and law of the case.*

*5- BECAUSE the appellant craves leave to add or alter, any or more ground or grounds of Appeal, at the time of hearing of Appeal.*

**3.** At the time of hearing, the learned counsel for the assessee stated that the Assessing Officer has completed the assessment under 144 of the Income-tax Act, 1961 (for short 'the Act') and the First Appellate Authority has also decided

the issue in dispute without affording sufficient opportunity of being heard to the Assessee. He only requested that the issue in dispute may be set aside to the learned First Appellate Authority to decide the issue afresh as per law, after affording full opportunity of being heard to the assessee.

**4.** Learned DR, on the other hand, relied on the order passed by the learned First Appellate Authority and stated that the Assessing Officer as well as the First Appellate Authority has given full opportunity of being heard to the assessee, but the assessee did not avail the same, therefore, the impugned order passed by the learned First Appellate Authority may be upheld and the appeals of the assessee may be dismissed.

**5.** I have heard both the parties and have perused the orders passed by the Revenue Authority, especially the impugned order passed by the learned First Appellate Authority. No doubt, the Assessing Officer has completed the assessment under Section 144 of the Act. The learned First Appellate Authority has given various reasons for non-appearance of the assessee and decided the issues in dispute

against the assessee by mentioning various reasons in the impugned order. I am not commenting upon the reasons mentioned by the learned First Appellate Authority for dismissing the appeal filed by the assessee, but I am of the view that the learned First Appellate Authority has dismissed the appeal of the assessee on various technical grounds but without providing sufficient opportunity of being heard to the assessee, which is contrary to the principles of natural justice. In my considered view, the issue in dispute in both the appeals, i.e., quantum as well as the penalty, requires reconsideration at the level of the learned First Appellate Authority with the direction to decide the same afresh as per law, after giving full opportunity of being heard to the assessee. It is made clear that the assessee will cooperate in smooth proceedings before the learned First Appellate Authority and will answer to each and every queries made by the learned first appellate authority. Accordingly, in the interest of justice, the issue involved in both the appeals, i.e., 1403/Del/2019 and 1404/Del/2019 related to quantum of additions and penalty respectively are set aside to the file of

learned First Appellate Authority with the direction to decide the issue afresh, after affording opportunity of being heard to the assessee.

**6.** In the result, both the appeals of the assessee are allowed for statistical purposes.

***Order is pronounced in the open court on 26<sup>th</sup> December, 2019.***

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

Dated: 26<sup>th</sup> December, 2019.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi