

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.655/Agra/2018
(ASSESSMENT YEAR: 2014-15)**

Shri Manoj Kumar Chourasia, Ward No.3, Maharajpur, Chhatarpur PAN: ANJPC6449B (Appellant)	Vs.	ITO, Chhatarpur (Respondent)
--	------------	---

Appellant by	None
Respondent by	Shri Waseem Arshad, Sr. DR

Date of Hearing	20-12-2019
Date of Pronouncement	06-01-2020

ORDER

Per LALIET KUMAR, J.M.:

This appeal of assessee is directed against the order of Commissioner of Income Tax (Appeals), Gwalior, dated 20-06-2018 for the AY.2014-15 on the following Grounds:

- “1. On the facts and in the circumstances of the case, the learned CIT(A) was not justified in confirming the penalty of Rs.35,000/- u/s 271A of the IT Act. The penalty may kindly be cancelled.*
- 2. The appellant craves leave to add, amend, alter, substitute & delete any ground at any time or before hearing of the appeal.”*

2. None appeared on behalf of the assessee during the course of hearing as such we have heard and decided the appeal on the basis of the material available on record.

3. The Ld.DR had submitted that the turnover of the assessee during the assessment year under consideration was Rs.42,72,602/- and our attention was drawn to para 4 of the assessment order, where the Assessing Officer after referring to the return of income, Profit & Loss A/c and the cash deposited into the bank, came to the conclusion that the turnover of the assessee mentioned in the return of income was Rs.42,72,602/-. As the turnover of assessee was more than Rs.10 Lakhs and assessee failed to maintain the books of account, a show cause notice u/s.271A of the Income Tax Act [Act] was issued to the assessee. The assessee filed reply to the show cause notice and the reply was considered by the Assessing Officer and thereafter, the penalty u/s.271A of the Act was confirmed.

3.1. The assessee being aggrieved by the order had approached to the CIT(A). However, the Ld.CIT(A) had dismissed the appeal on the ground that the appeal was filed belatedly and therefore the appeal is dismissed in *limine*.

4. We have heard Ld.DR and perused the material available on record. Ld.CIT(A) had dismissed the appeal mainly on the ground that there was delay in filing the appeal before the Ld.CIT(A). As per para 3 the order of AO, was passed and served on the assessee on 05-07-2017 and the appeal was required to be filed on or before 04-08-2017, however, the appeal was filed against the AO order on 02-02-2018. Admittedly, there was delay in filing the appeal. However, considering the totality of the circumstances and especially the fact that the quantum appeal is still pending before the First Appellate Authority, we deem it fit and proper to allow the appeal of the assessee and remit back the matter to the file of CIT(A) for deciding the present appeal on the basis of the merits. Needless to mention that the delay in filing of appeal is condoned and Ld.CIT(A) shall decide the appeal in accordance with law, considering the merits of the appeal.

5. In the result, the appeal of assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 06-01-2020

Sd/
(Dr. M.L. MEENA)
ACCOUNTANT MEMBER

TNMM

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sr. Private Secretary
ITAT AGRA