

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI  
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

I.T.A. No. 2605/Del/2019  
Assessment Year: 2009-10

Sh. Mukul Agarwal,  
C/o M/s RRA TAXINDIA  
D-28, South Extension, Part-I  
New Delhi

vs. Income Tax Officer,  
Ward-3(2), Bulandshahr

(PAN:ADOPA3844M)  
**(ASSESSEE)**

**(RESPONDENT)**

**Assessee by:** Dr. Rakesh Gupta, Adv  
& Sh. Somil Agarwal, Adv

**Revenue by:** Ms. Parul Singh, Sr. DR

**ORDER**

This appeal is filed by the assessee against the impugned order dated 18.01.2019 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2009-10 on the following grounds:-

- 1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in deciding the appeal in limine by treating it as having been filed delayedly and hence as non-est being defective and that too by recording incorrect facts and findings and in violation of principles of natural justice.*
- 2. That in any case and in any view of the matter, action of Ld. CIT(A) in treating the appeal of assessee as delayed appeal and hence non-est being defective, is bad in law and against the facts and circumstances of the case.*
- 3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order u/s 144/147 and that too without assuming jurisdiction as per law and without complying with mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act. 1961.*

4. *That in any case and in any view of the matter, action of Ld. CIT(A) in not quashing the impugned reassessment order u/s 144/147, is bad in law and against the facts and circumstances of the case.*

5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not quashing the impugned reassessment order passed by Ld. AO u/s 144/147 and that too without serving the mandatory notices u/s 148 and 142(1) of Income Tax Act, 1961.*

6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the addition of Rs. 11,38,000/- made by Ld. AO on account of cash deposits by treating it as alleged unexplained cash credit u/s 69 and that too by recording incorrect facts and findings and without observing the principles of natural justice.*

7. *That in any case and in any view of the matter, action of Ld. CIT(A) in not deleting the addition of Rs. 11,38,000/- made by Ld. AO on account of cash deposits by treating it as alleged unexplained cash credit u/s 69, is bad in law and against the facts and circumstances of the case and the same is not sustainable on various legal and factual grounds.*

8. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A and 234B of the Income tax Act, 1961.*

2. At the time of hearing, learned counsel for the assessee stated that the learned First Appellate Authority has decided the issues in dispute against the assessee *ex parte* without providing sufficient opportunity of hearing to the assessee and he requested that the issues in dispute may be set aside to the learned First Appellate Authority to decide the same afresh, as per law, after giving opportunity of being heard to the assessee.

3. Learned DR for the Revenue did not raise any objection on the request of the learned counsel for the assessee.

4. After hearing both the parties and perusing the orders passed by the Revenue authorities especially the impugned order, I am of the considered

view that learned First Appellate Authority has decided the issues in dispute against the assessee by passing a non speaking and *ex parte* order and dismissed the appeal of the assessee in limini which is contrary to law and facts on the file and liable to be cancelled. Therefore, in the interest of justice, I am cancelling the impugned order and setting aside the issues in dispute to the learned First Appellate Authority to decide the same afresh, as per law, after giving opportunity of being heard to the assessee.

5. Keeping in view the non cooperation of the assessee before the Revenue authorities, I am directing the assessee through his counsel to appear before the learned First Appellate Authority on 23.04.2020 at 10:00 am. There is no need to issue notice to the assessee for 23.04.2020 because this order has been pronounced in the Open Court.

6. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 12/02/2020.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

Date: 12/02/2020

SH

**Copy forwarded to: -**

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches