

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

**BEFORE
SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.2759/Del/2017
(ASSESSMENT YEAR-2010-11)**

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| Sh. Raj Kumar Singh Prop. R.K. Singh & Co. D-4, Sector-31 Noida-201301. PAN –AFPPS 6584M | Vs. | Income Tax Officer Ward-1(3), Noida. |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---------------------------------|
| Appellant By | None |
| Respondent by | Sh. Umesh Takyar, Sr. DR |
| Date of Hearing | 25.02.2020 |
| Date of Pronouncement | 25.02.2020 |

ORDER

PER BHAVNESH SAINI, JUDICIAL MEMBER:

This appeal by Assessee has been directed against the order of Ld. CIT (Appeals)-1, Noida {CIT(A)} dated 30.09.2016 for the Assessment Year: 2010-11, challenging the levy of penalty u/s 271(1)(c) of the I.T. Act.

2. On the last date of hearing, the appeal was adjourned on the request of the assessee for 25th Feb. 2020, however, none appeared on behalf of the assessee on the date of hearing.

3. We have heard the Ld. DR and perused the material available on record.

4. The appeal of the assessee is time barred by 139 days. The assessee moved an application for condonation of delay stating that assessee was sick as he was a heart patient, therefore, appeal could not have filed within the stipulated period. Application is supported by medical prescriptions. Considering the explanation of assessee, we are satisfied that the assessee was prevented by sufficient cause in not filing the appeal within the prescribed time limit. The delay in filing the appeal is therefore condoned.

5. After hearing the Ld. DR, we are of the view the matter requires re-consideration at the level of the Ld. CIT(A). The AO, vide separate order levied the penalty u/s 271(1)(c) of the I.T. Act on account of unexplained credit etc. The Ld. CIT(A) noted in the impugned order that several dates of hearing have been intimated to assessee but it appears that assessee is not interested in prosecuting the appeal. The Ld. CIT(A) in absence of assessee dismissed the appeal of the assessee. The impugned order shows that the Ld. CIT(A) has not passed any order on merits giving reasons for decision in the appellate order. It is violation of section 250(6) of the I.T.

Act, therefore, order of Ld. CIT(A) cannot be sustained in law. Even if assessee do not appear before the Ld. CIT(A), the Ld. CIT(A) is required to pass the order on merits giving reasons for decision in the appellate order. In this view of the matter, we set aside the order of Ld. CIT(A) and restore the appeal of the assessee to his file with direction to re-decide the appeal on the merits in accordance with law by giving reasonable and sufficient opportunities of being heard to the assessee and by giving reasons for decision in the appellate order.

5. In the result, the Appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 25/02/2020.

Sd/-

(O.P.KANT)
ACCOUNTANT MEMBER

Dated: 25/02/2020
PK/PS

Copy forwarded to:

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

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI