

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 268/DEL/2019 (A.Y 2009-10)

Ompal Singh S/o Shri Brahm Singh, Village- Duhai, Ghaziabad Uttar Pradesh PIN: 201001 PAN: DNUPP7716J (APPELLANT)	Vs	ITO Ward-1(2) Room No. C-103, Ist Floor, CGO-II, Kazmla Nehru, Uttar Pradesh Ghaziabad (RESPONDENT)
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ITA No. 3008/DEL/2019 (A.Y 2009-10)

Ompal Singh Sanjay Prashar Adv, 47A, FF, Devika Chamber Opp. Mahalaxmi Mall, RDC, Raj Nagar, Ghaziabad Uttar Pradesh PAN: DNUPP7716J (APPELLANT)	Vs	ITO Ward-1(2) Room No. C-103, ist Floor, CGO-II, Kazmla Nehru, Uttar Pradesh Ghaziabad (RESPONDENT)
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Appellant by	Sh. Sahil Shrma & Sh. Vinay Verma, Advs
Respondent by	Sh. Jagdish Singh, Sr. DR

Date of Hearing	24.02.2020
Date of Pronouncement	26.02.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 30/11/2018, 27/02/2019 respectively, passed by CIT(A)-Ghaziabad, for Assessment Year 2009-10.

2. The grounds of appeal are as under:- **ITA No. 268/DEL/2019**

1. *“That the Ld. CIT(A), Ghaziabad erred in law, on facts and in surrounding Circumstances in dismissing the appeal in limine and in arbitrary, whimsical manner and that too on technical grounds.*
2. *That the Ld. CIT(A) also erred in law, on facts and in surrounding circumstances in failing to examine the validity of service as per law of notice, alleged to have been issued by her office.*
3. *That the Ld. CIT(A) erred in law on facts and in surrounding circumstances in failing to appreciate that the appellant of rural background having zero knowledge of complicated procedure of income tax law does not stand to benefit by not prosecuting the appeal involving huge penalty.*
4. *That the Ld. CIT(A) further erred in law, on facts and in surrounding circumstances in failing to appreciate that “satisfaction of A.O” has neither been recorded in impugned assessment order nor in impugned exparte penalty order under appeal, which render the same unsustainable in law.*
5. *That the Ld. CIT(A) also erred in law, on facts and in surrounding circumstances in failing to appreciate that the quantum appeal itself is pending before her for adjudication and impugned penalty order is itself unsustainable in law till disposal of appeal.*
6. *That the Ld. CIT(A) erred in law, on facts and in surrounding circumstances in failing to appreciate that the delay of 23 days in filing appeal was not intentional, deliberate but was based on medical grounds.*

ITA No. 3008/DEL/2019

1. *“That the order of Ld. A.O. ought to have been set aside as it was passed u/s 144/147 of I.T. Act.*
2. *That the Ld. CIT(A) was wrong in confirming the assessment order and dismissing the appeal in limine.*

3. *That the Ld. CIT(A) erred in not appreciating letter dated 12-11-2018 of Ld. CIT(A) asking the reason to explain the delay in filing appeal (Annexure-A). The letter of assessee dated 20-11-2018 explaining the delay on account of medical treatment of the assessee (Annexure-B).*
4. *That on the above account, his conclusion that no reason was shown and failure of reasonable diligence existed in prosecuting the appeal is wrong and the order ought to be set aside.*
5. *That on the facts there was a reasonable cause in filing the appeal late on this ground, its dismissal is wrong.*
6. *That apart from the above, the assessee is challenging on the basis of reasons on record, the re-assessment proceedings and the order as being without the authority of law.*
7. *That the above ground being fundamental to the assessment order should be resolved first being purely legal in nature to determine the validity of the re-assessment order passed u/s 144/147 of I. T. Act.*
8. *That even otherwise, levy of capital gains tax is wrong.”*

4. The assessee is a villager and sold agricultural land of Rs. 25,00,000/- at market rates involving stamp duty valuation of Rs. 52,10,000/- vide sale deed dated 21/10/2008. The Assessing Officer computed the capital gain tax income amounting to Rs. 46,22,498/-. The assessment order was passed u/s 144 of the Income Tax Act, 1961.

5. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal on the ground of delay.

6. The Ld. AR submitted that no opportunity was given by the Assessing Officer as well as by the CIT(A) to represent the case before the Revenue Authorities. Therefore, the assessee be granted opportunity of hearing by following principles of natural justice. The Ld. AR further submitted that due to medical exigencies, the assessee could not file appeal before the CIT(A)

within time and for which the assessee had filed condonation of delay on 20/11/2018 explaining the reason for delay. Therefore, the Ld. AR submitted that the delay may be condoned and direct the CIT(A) to heard the appeal on merit.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A).

8. We have heard both the parties and perused the material available on record. It can be seen that the assessee has filed condonation of delay application before the CIT(A) along with the medical certificates due to suffering of medical problems. The reason for condonation of delay before the CIT(A) was genuine. Therefore, the delay is condoned and therefore, it will be appropriate to remand back entire issue to the file of the CIT(A) for deciding the appeal of the assessee on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. Thus, ITA No. 3008/Del/2019 is partly allowed for statistical purpose. As regards ITA No. 268/Del/2019 relating to penalty u/s 271(1)(c), the same is consequential. Hence, the issue is remanded back to the file of the CIT(A), in light of the remand back in quantum appeal hereinabove.

9. In result, both the appeals are partly allowed for statistical purpose.

Order pronounced in the Open Court on 26th FEBRUARY, 2020.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 26/02/2020
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24.01.2020
Date on which the typed draft is placed before the dictating Member	25.01.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	26.02.2020
Date on which the final order is uploaded on the website of ITAT	26.02.2020
Date on which the file goes to the Bench Clerk	26.02.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant	

Registrar for signature on the order	
Date of dispatch of the Order	