

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

[Through Virtual Hearing]

**BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER**

**ITA No. 457/Lkw/2020
Assessment Year 2010-11**

Shri Daya Shankar Gupta, B-40, Sector-K, Aliganj, Lucknow PAN AEPPG 5756A	Vs.	ACIT, Central Circle-II, Lucknow
(Appellant)		(Respondent)

Appellant by	Application for withdrawal of appeal
Respondent by	Shri Harish Gidwani, CIT DR
Date of hearing	11/02/2021
Date of pronouncement	15/02/2021

ORDER

PER T.S. KAPOOR, A.M. :

This is assessee's appeal for Assessment Year 2010-11 against the order of the Id. CIT(A)-III, Lucknow dated 20.09.2017.

2. The assessee's appeal is delayed by one thousand one hundred twenty eight days. An application for condonation of delay has been filed, accompanied by an affidavit of the assessee. The contents of the application for condonation of delay are as under:

1. *That the order of Ld. CIT (Appeals)-III, Lucknow Dt. 27.09.2017 was received by the assesses on 29.09.2017 and hence the original period of*

limitation to file the appeal before the Hon'ble ITAT was available till 29.11.2017.

2. *That the quantum appeal of assessee was filed before the Hon'ble ITAT on 16.06.2015 for the same assessment year i.e. A.Y. 2010-11 vide ITA No. 388/LKW/2015.*
3. *That the said quantum appeal was decided by the Hon'ble ITAT vide order dt. 15.01.2016 and the appeal was set-aside by Hon'ble ITAT before the Ld. Assessing officer for fresh decision, Against which AO passed the order u/s 254/250/153A/143(3) dt. 29/12/2016, aggrieved by which assessee filed appeal before first appellate authority which is pending for adjudication.*
4. *That on 28.03.2016 the Ld. Asstt, Commissioner of Income Tax Central Circle-11, Lucknow passed the order of Penalty U/s 271(l)(c) of the Income Tax Act. And imposed the penalty of Rs. 4,00,000/-.*
5. *That the penalty order U/s 271(l)(c) dt. 28.03.2016 was challenged before the Ld. Commissioner of Income Tax (Appeals)-III, Lucknow and the appeal was decided by the Ld. C1T(A)-II vide order Dt. 20.09.2017 and confirming the penalty of Rs.4,00,000/-.*

REASON

6. *That appeal against the assessment order was originally filed before 1st appellate authority on 23.04.2013 which was dismissed vide order dated 03.11.2014, thereafter, Appellant filed appeal before Hon'ble ITAT on 16.06.2015. Hon'ble ITAT has set-aside the case, vide order dated 15.01.2016. At present such set-aside matter is pending before the Ld. CIT (A). During course of hearing CIT (A) sent matter relating to Valuation of property situated at C-8/66, Jankipuram Extension, Lucknow to Assessing Officer in Remand which is still at present pending. Therefore, assessee due to oversight' could not comply penalty order passed by Ld. CIT(A) due to pendency of appeal on quantum before Ld. CIT(A). The Appellant was under bonafide belief that he has to first file against quantum of appeal before second appellate authority, therefore, penalty order passed by CIT(A) was not assailed.*
7. *There is no malafide in the assessee not preferring the appeal within the prescribed period of limitation and accordingly it is prayed that the delay of 1128 days may kindly be condoned in the interest of justice and the appeal be heard on merits."*

3. In view of the above contents of the application for condonation of delay, duly supported by affidavit of the assessee, it is seen that the assessee was prevented by sufficient cause from filing the appeal in

time. Ld. DR also did not raise any objection against condonation of delay. Accordingly, the delay is one thousand one hundred twenty eight days in filing the appeal is condoned.

4. At the outset, it was noticed that the assessee has submitted application, received by the Registry of this Office on 05.02.2021, vide which it has been submitted that the Principal Commissioner of Income Tax, Lucknow-1 has issued a certificate in Form No.3 on 13.01.2021 under the Vivad Se Vishwas Scheme, therefore, the assessee wants to withdraw the appeal. Ld. DR has no objection. Accordingly, we permit the assessee to withdraw the appeal.

5. In the result, the appeal of the assessee is dismissed as withdrawn.

(Order pronounced in the open court on 15/02/2021)

Sd/-
(A.D. Jain)
Vice President

Sd/-
(T.S. Kapoor)
Accountant Member

Aks -
Dtd. 15/02/2021

Copy of order forwarded to:

<i>(1) The appellant</i>	<i>(2) The respondent</i>
<i>(3) Commissioner</i>	<i>(4) CIT(A)</i>
<i>(5) Departmental Representative</i>	<i>(6) Guard File</i>

By order