

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No.5396/DEL/2019 (A.Y 2010-11)

(THROUGH VIDEO CONFERENCING)

Sanjay Tyagi 85, Mohanpuri, Niwari Modinagar, Ghaziabad, Uttar Pradesh PAN: AIHPT6300R (APPELLANT)	Vs	ITO Ward-2(4), Ghaziabad, Uttar Pradesh (RESPONDENT)
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Appellant by	Sh. Santanu Karungo, Adv
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	11.03.2021
Date of Pronouncement	11.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 28/02/2019 passed by CIT(A)-Ghaziabad, for assessment year 2010-11.

2. The grounds of appeal are as under:-

“1. That the impugned order passed u/s 250 of the Income Tax Act, 1961 is bad in law and needs to be set aside.

2. That the impugned order was passed completely on wrong facts and without the considering the reason for condonation of delay, as mentioned in the Form 35 of the Appellant.

3) That the assessment order passed u/s 144 read with section 147 of the Income Tax Act is illegal, bad in law and needs to be set-aside.

- 4) *That the provision of the section 143(2) was not complied with and no notice was issued u/s 143(2) of 'The Act.'*
- 5) *That assessment order was further illegal as provisions of the sections 148 and 151 were not followed as provided under 'The Act'.*
- 6) *That assessment order was further illegal due to the misrepresentation of the facts in the order.*

If necessary additional / revised / modified grounds of Appeal shall be filed at the time of hearing of instant Appeal.

Prayer

It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to pass order in favour of the Appellant and allow all the grounds no. 1 to 6 of this instant appeal.

Such other further order this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case in favor of the Appellant and against the Respondent.

3. The assessee deposited Rs. 25,10,100.00/- in his saving bank account with Zila Sahkari Bank Ltd. Ghaziabad Branch Govindpuri, Modinagar during the year and the same were deposited out of sale proceeds of Agriculture Land at Village-Niwari. The Assessing Officer assessed the total income at Rs. 26,58,966/- thereby making additions of Rs.25,10,000/- in respect of cash deposits.
4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.
5. The Ld. AR submitted that the CIT(A) has passed ex-parte order without condoning the delay in filing the appeal before the CIT(A) as the assessee's father was ill during that period and

afterwards expired. There was a delay of 25 days in filing the said appeal before the CIT(A).

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

7. We have both the parties and perused all the relevant material available on record. It is pertinent to note that in Form No. 35 before the CIT(A) the assessee has explain the delay in filing the appeal before the CIT(A). Hence, the assessee has given a genuine a reason in filing the appeal belatedly for 25 days before the CIT(A). The CIT(A) has totally ignored this fact and passed ex-parte order by dismissing the appeal of the assessee. The Ld. AR has made out the case of the assessee and there is a genuine reason for delay, hence, the delay in filing the appeal before the CIT(A) is condoned. We are remanding back the issues contested by the assessee before the CIT(A) to be decided on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court in presence of both the parties on this 11th Day of March, 2021.

**Sd/-
(G. S. PANNU)
VICE PRESIDENT**

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

Dated: 11/03/2021
*R. Naheed **

Copy forwarded to:

1. Appellant

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

ASSISTANT REGISTRAR

ITAT NEW DELHI