

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.9230/Del/2019
Assessment Year: 2011-12

Sunil Tigga,
146, B-Block, Nandgram,
Ghaziabad (UP).

Vs ITO,
Ward-2(3),
Ghaziabad (UP).

PAN: AKAPT2884K

(Appellant)

(Respondent)

Assessee by	:	Shri Neeraj Jain, Advocate
Revenue by	:	Ms Renu Mukherjee, Sr. DR
Date of Hearing	:	17.03.2021
Date of Pronouncement	:	17.03.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the ex parte order dated 30th October, 2019 of the CIT(A), Ghaziabad, relating to assessment year 2011-12.

2. Although a number of grounds have been raised by the assessee, these all relate to the ex parte order of the CIT(A) in dismissing the appeal filed by the assessee due to delay in filing the appeal.

3. Facts of the case, in brief, are that the assessee is an individual. On the basis of AIR information that the assessee has sold immovable property for a sale

consideration of Rs.7,67,000/- for the impugned assessment year, the AO, after recording reasons and after obtaining the prior approval from the PCIT, issued notice u/s 148 of the Act to the assessee on 28th March, 2018. In response to the said notice, the assessee did not file the return of income nor responded to notice u/s 142(1) of the Act. Even the subsequent notices issued by the AO remained uncomplished with. Therefore, the AO completed the assessment u/s 147/144 of the Act determining the total income at Rs.7,67,000/-. Since there was a delay in filing of the appeal by 23 days, the Id.CIT(A), in the ex parte order passed by her, dismissed the appeal as nonest being defective.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee submitted that due to non-receipt of notice from the AO, the assessee could not respond to the notice issued u/s 148 or to the subsequent notices issued u/s 142(1) of the IT Act. He submitted that before the CIT(A) the assessee while filing the appeal had also made an application for condonation of the delay stating that the assessee is a heart patient and was not in good health at the relevant time and after his health was improved, the appeal was filed. However, the Id.CIT(A) without condoning the delay, dismissed the appeal on technical ground treating the same as nonest. He submitted that in the interest of justice the assessee should be given an opportunity to substantiate his case.

6. The ld. DR, on the other hand, submitted that the assessee was non-cooperative before the AO and there was also delay in filing of the appeal before the CIT(A). Therefore, the ld.CIT(A) was fully justified in dismissing the appeal filed by the assessee.

7. I have considered the rival arguments made by both the sides and perused the record. It is an admitted fact that due to non-compliance to the notices issued u/s 148 or to the subsequent notices issued u/s 142(1), the AO was constrained to complete the assessment u/s 147/144 of the Act determining the total income of the assessee at Rs.7,67,000/-. I find, although the assessee filed the appeal belatedly before the CIT(A) which was delayed by 23 days and an explanation was also given before her explaining the reasons for such delay, I find, the ld.CIT(A) dismissed the appeal treating the same as nonest being defective. A perusal of the order of the CIT(A) shows that the assessee had filed the following reply before her which has been reproduced by her at page 2 of her order:-

01. That the appellant- assessee had filed an appeal before your honor on 19.02.2019 for A.Y. 2011-12.

2. That the assessment order for A.Y. 2011-2012 was received on 29.12.2018 by the wife of the assessee. The wife kept the order with herself as the appellant - assessee is a heart patient and to avoid shock. She informed the appellant in end of January 2019. When the condition of the appellant- assessee Improved. Immediately the appellant -assessee contacted the advocate who deposited the appeal fee on 06.02.2019 and e-filed the appeal on 19.02.2019.

3. That the delay in filing the appeal was due to fact the appellant - Assessee is heart patient and was not in good health. As soon as the appellant- assessee health improved the appeal was filed.

4. That the appellant- assessee was prevented in filing the appeal in time as the appellant- assessee is a heart patient and as soon as his health improved the appeal filed. This being a sufficient cause for not filing the appeal in time.

In view of the legal position it is prayed before your honor to condone the delay and accept the appeal.

Enclosure & Affidavit.

8. The Honorable Supreme Court in the case of Collector Land Acquisition vs. Mst. Katiji & Ors reported in (1987) 2 SCC 107 on the issue of condonation of delay has made the following observations:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

9. Considering the totality of the facts of the case and in the interest of justice, I direct the CIT(A) to condone the delay in filing of the appeal by the assessee and decide the appeal on merit after giving due opportunity of being heard to the

assessee. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

The decision was pronounced in the open court on conclusion of the hearing itself, i.e., on 17.03.2021.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 17th March, 2021.

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Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi