

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH
'SMC' CHANDIGARH**

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 980/CHD/2019

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Satbir Singh Sadana, # 4511-B, Sector 70, Mohali.	बनाम VS	The ITO, Ward 5(2), Chandigarh.
स्थायी लेखा सं./PAN No: AQQPS6702H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vikrant Kackria

राजस्व की ओर से/ Revenue by : Shri Ashok Khanna, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 11.05.2021

उदघोषणा की तारीख/Date of Pronouncement : 28.05.2021

Hearing conducted via Webex

आदेश/ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 28.07.2017 of CIT(A)-II Gurgaon pertaining to 2009-10 assessment year.

2. However before addressing the specific grievance of the assessee it is relevant to first address the delay of 640 days pointed out by the Registry in the filing of the present appeal.

3. Addressing the delay, ld. AR invited attention to the application addressing the delay moved by the assessee. It was further submitted that the application has been supported by the Affidavit of the assessee. Relying thereon it was submitted that the assessee remained unaware of the fixation of the appeal itself before the ld CIT(A) as after filing the appeal through a counsel the assessee did everything within his power to facilitate a hearing .Referring to the impugned order itself, it was submitted that it would show that the assessee remained unrepresented before the ld CIT(A) also as a result an ex parte order was passed .Column no.4 of page one of the impugned order it was submitted would show that the address for communication available was of the counsel. Thus it was his submission that the copy of the order possibly sent by the Department to the counsel remained with the counsel as the assessee was never informed. The assessee consequently remained in ignorance. It was submitted that only at the Penalty stage the assessee became aware of this fact and made efforts to obtain a copy of the order. Hence in these peculiar facts it was his prayer that the delay be condoned.

4. The ld.Sr.DR on a perusal of the impugned order which clearly showed that the address available was of a counsel did not dispute the facts stated on an Affidavit and did not oppose the prayer for Condonation of Delay.

5. I have heard the submissions and perused the material available on record. In the facts of the present case it is seen that the assessee having

engaged a counsel to represent him before the Appellate Authority discharged his onus .The record shows that the counsel for some reason did not participate in the proceedings before the First Appellate Authority. It is also evident that the address available to the First Appellate Authority was that of the counsel. In the circumstances the claims in the application duly supported by the Affidavit of the assessee clearly demonstrates that for reasons beyond the control of the assessee the inordinate delay of 640 days has occurred. For the sake of completeness the relevant contents of the Affidavit not disputed by the department are extracted hereunder :

1. *That I am the permanent resident of the address mentioned as above.*
2. *That I had filed an Appeal for the A.Y 2009-10 with the worthy CIT(A)-II, Gurgaon on 16.04.2015 against the order passed u/s 147 r.w.s 143(3) by the ITO Ward- 5(2) Chandigarh dated 25.03.2015.*
3. *That I was not aware of the order passed by the worthy CIT(A) -II Gurgaon in Appeal No. 47/15-16, until & unless the penalty proceedings u/s 274 r.w.s 271(1) (c) were initiated against me for the A.Y 2009-10.*
4. *That thereafter, when I came to know about the order passed by the Id. CIT(A) as referred above, a request for obtaining the copy of the Appellate order was made by me on 16.03.2019.*
5. *That I have received the certified copy of the order passed by the worthy CIT(A) Gurgaon on 06.05.2019.*
6. *That earlier I had engaged S. Khanna and Associates, Chartered Accountants, #3007, GF, Sec-45-D, Chandigarh to prepare my appeal before the worthy CIT(A)-II, Gurgaon but he did not inform me about the date of decision of the appeal which resulted in delay of 640 days in filing the appeal before the Hon'ble ITAT.”*

6. The relevant extract of the page one of the impugned order supporting the assertions is also extracted hereunder :

IN THE OFFICE OF THE COMMISSIONER OF INCOME TAX
(APPEALS)-II, GURGAON

कार्यालय आयकर आयुक्त ,अपील-2, गुडगाँव

ITNS 55

Appeal No. 47/15-16.		Date of order: 28.07.2017
1	Assessment Year	2009-10
2	Date of Institution	16.04.2015
3	Name & Designation of the Assessing Officer	Ms. Suman Kaur, Income Tax Officer, Ward-5(2), Chandigarh.
4	Name & Address of the Appellant	Sh. Satbir Singh Sadana, C/o S. Khanna and Associates, CA, 3007, GF, Sec-45-D, Chandigarh.
5	Assessed Income	Rs. 16,79,418/-
6	Income Tax Demand	Rs. 6,97,400/-
8	PAN/TAN	AQQPS6702H
9	Section under which order Appealed against was passed	U/s 143(3)/147 of the I.T. Act, 1961
10	Date (s) of hearing	As per records
11	Present for the Appellant	None Attendant
12	Present for the Department	None

6.1 It is seen that as per column 4 the following name of the counsel is given:

“4. Name & Address of the Appellant **Sh. Satbir Singh Sadana**
C/o S. Khanna and Associates, C.A.
3007, GF, Sec-45D, Chandigarh.”

7. Accordingly, in the light of the peculiar facts and circumstances on record, I am of the view that the delay deserves to be condoned. In the facts, it is seen that the assessee having appointed a counsel to represent him as is evidenced from the record itself namely Column No. 4 of page 1 extracted herein above supports the claim that the assessee was live and alert to his

responsibilities. In the circumstances, where the counsel was appointed to represent the assessee, the assessee could afford to remain sanguine and rest in belief that all that is required to be done by him is being done. A perusal of the above extract demonstrates that the assessee remained unrepresented. The argument that the order was not available to him is strengthened. Accordingly, in the peculiar facts it clearly demonstrates that the delay has occurred for reasons beyond the control of the assessee. It is seen that even otherwise it is evident on record that no advantage has been gained by the assessee in filing the appeal late nor any advantage vested with the department has been deprived. Satisfied by the explanation afforded on a consideration of facts, circumstances and arguments which stand unrebutted by the Revenue, the delay is condoned.

8. Said order was announced and thereafter, the parties were accordingly directed to argue the appeal on merits.

9. Reiterating the arguments advanced in the condonation of delay application, it was submitted by the ld. AR that effectively the assessee was not heard. Accordingly, it was his limited prayer that the matter may be remanded back to the CIT(A). Supporting the request made ld AR gave his oral undertaking that the assessee shall participate fully and fairly in the proceedings before the CIT(A) in the eventuality of remand.

10. The request was not opposed by the ld DR

11. Accordingly, on a consideration of peculiar facts and circumstances of the case, it is evident that the assessee remained unrepresented for no fault of his. In view thereof, the impugned order is set aside and the issue is remanded back to the CIT(A) with the direction to pass an order on the basis of material available on record after providing the assessee a reasonable opportunity of being heard. The assessee in its own interest is directed to participate fully and fairly in the proceedings before the CIT(A)/ Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 28th May, 2021.

Sd/-

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“प्लम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar