

**INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "SMC": NEW DELHI]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA. No. 4586/Del/2019
(Assessment Year: 2008-09)

Shri Jagdish Singh, C/o. J. S. Trading Co., 202, 2 nd Floor, Ten Singh Plaza, Rakesh Marg, Ghaziabad. PAN: BIGPS1025J	Vs.	Income Tax Officer, Ward : 1 (3) Ghaziabad.
(Appellant)		(Respondent)

Assessee by :	Shri Abhishek Sinha, Advocate;
Revenue by:	Shri R. K. Gupta, Sr. D. R.;
Date of Hearing :	12/08/2021
Date of pronouncement :	12/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order dated 28.02.2019 passed by the Id. Commissioner of Income Tax (Appeals), Ghaziabad, for assessment year 2008-09 raising the following grounds of appeal:-

1	‘Rejecting Condonation of Delay without verifying truthness’ i. The CIT (A) Ghaziabad erred in law on facts in rejecting the application for ‘Condonation of Delay’ as the delay in filing of the appeal was due to wrong interpretation of law and facts on the part of the previous counsel of the Appellant. ii. The CIT (A) Ghaziabad erred in ‘Condonation of Delay’ whereas the appellant has filed delay condoned Application dt. 20.12.2017 along-with Affidavit solemnly affirmed on 2.01.2018 filed with prescribed Appeal memo on Form No. 35 filed on 03 rd Jan., 2018. iii. The CIT (A) Ghaziabad has not considered the Reasons for not filing the Appeal within due time whereas proper and valid reasons were mentioned in para No. 3 of “Delay condonation Application” as well as in para No. 3 of ‘Affidavit of the Appellant’. iv. The appellant has cited various cases vide letter dt. 21.02.2019 but the Ld. CIT (A) has not considered those cases.	
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2	<p>No sufficient 7 reasonable opportunity given</p> <p>i. The Ld. CIT (A) has not provided any opportunity for hearing to the Appellant while officially it was mentioned in the Prayer in respect of Delay condoned Application 'It is requested, to kindly provide the sufficient and reasonable time, opportunity for hearing before taking any decision" in reply filed on 21.02.2019 in continuation of reply dated 12.02.2019 against Notice dt. 28.01.2019 related to F. No. CIT(A)GZB/2018-19/1527.</p> <p>ii. That the Ld. CIT (A) has not considered the circumstances for not appearing before the concerning A.O. while ignoring the illness of appellant, daughter suffering from chronic disease and negligence of the previous Lawyer by preventing by sufficient cause for producing the evidence.</p> <p>iii. The CIT (A) has not entertained / considered any grounds of Appeal while the Appellant has su-motto filed Written Arguments along-with various evidences and documents as per 'Index to paper Book" on 8.03.2019 against order made under Section 271(1)(c) of I. Tax Act, 1961 with the result ther Appellant has denied the natural justice.</p> <p>iv. That the Department has claimed that all the notices under Section 271(1)(c) has been served on the appellant while mostly Notices has not been served on the appellant.</p>	
3	<p>No Particulars has been Concealed</p> <p>i. That the appellant has not concealed any particulars of his income and disallowance of any claim or exemption do not amount to furnishing inaccurate particulars regarding income by the appellant and specially depositing of Rs.12,36,000/- as it was deposited in the Bank out of Bank loan, Business Income, withdrawing the amount from time to time and Agricultural income amounting to Rs.80,000/- whereas the Ld. A.O. has not admitted the source of deposit and treated the deposit in Bank as Income of the Appellant whereas the Appellant was only responsible for explaining Rs.1,24,500/- as per Peak Chart of cash deposit instead of Rs.12,36,000/-.</p>	437445/-
4	<p>General</p> <p>i. To Cancel the impugned Demand of Income Tax liability of Rs.4,37,445/- (including Interest under Section 234B, U/s. 234-A, U/s. 234-D.</p> <p>ii. That appellant craves leave to add, alter or amend any ground of appeal at or before to hearing of this appeal.</p>	
	Total tax effect	437445/-

2. Brief facts of the case shows that the assessee is an individual who took voluntary retirement from Indian Army on account of his illness, filed his return of income for assessment year 2008 – 09 declaring income of ₹ 165,200/- which included the pension income of ₹ 57,600 and business income of ₹ 107,600. Such return came to be filed in 19/file/2008. The notice u/s 148 was issued on 17 March 2015 on the ground that assessee has deposited cash of ₹ 1,236,000 in his bank account. During the course of assessment proceedings, the assessee did not make any compliance. Therefore, notice u/s 144 of the act was issued on 14/11/2015 mentioning two different addresses of the assessee at a Ghaziabad. None attended, and

therefore the learned assessing officer made an addition of ₹ 1,236,004 the reason that the bank account of the assessee with Oriental Bank of commerce model town Ghaziabad account number 55042 the assessee has deposited ₹ 1,236,000 on different dates ranging from Rs 1000 to Rs 3 lakhs on 35 different occasions totaling in all to Rs 1,236,000/- for which the assessee has not given any explanation. Thus the assessment order was passed u/s 147 read with Section 144 of the act at the total income of the assessee at ₹ 1,422,800 by an order dated 29/12/2015.

3. At the time of passing of the assessment order the AO recorded the satisfaction that since the assessee has furnished inaccurate particulars of its income penalty proceedings u/s 271 (1) (C) of the act are being initiated separately.
4. Subsequently the penalty proceeding commenced and assessee was given 4 different opportunities for hearing however assessee did not comply with any of them. Therefore the learned assessing officer passed an order u/s 271 (1) (c) of the income tax act 1961 on 20 June 2016 holding that:-
“ 4. I have carefully gone through records of the assessee, as well as the legal position and found that assessee has concealed the particulars of income/furnished inaccurate particulars of income, and non-co-operative attitude of the assessee, the assessee has rendered itself liable for penalty u/s 271 (1) © of the income tax act 1961,”
5. Thereafter in paragraph number 6, he held that assessee has concealed its particular of income and therefore levy penalty at the rate of hundred percent amounting to Rs 437,445/- as per order dated 28 June 2016.
6. Assessee aggrieved with that order has preferred an appeal before the learned CIT – A on third of January 2018 which is found to be delayed by more than 18 months. The learned CIT – A issued notice to the assessee to explain the delay for in filing of the appeal. Assessee submitted that that counsel of the assessee Mr. Dharmedndra singh did not care to challenge the order of assessment as well as of the penalty. The assessee has filed this appeal requesting condonation of delay as the delay in filing of the appeal is a debatable to the previous counsel of the assessee would not advise the assessee properly for filing the appeal before the concerned authority. The learned CIT – A held that the delay is unjustified and condonation of delay is

not a matter of right. In view of this, he held that the appeal filed by the assessee is non est and defective and therefore dismissed in limine. Assessee aggrieved with that order has preferred the appeal before us.

7. The learned authorised representative submitted that when the interest of justice and delay in appeal is concerned and they are pitted against each other, the interest of justice should prevail. Therefore, he submitted that the learned CIT – A should have conned on the delay in filing of the appeal. He submitted that assessee has also filed an affidavit on 2 January 2018 stating that delay in filing of the appeal is on account of insufficient/inappropriate advice given by the erstwhile legal counsel of the assessee by not filing an appeal in time the case the assessment order as well as the penalty order.
8. The learned departmental representative vehemently supported the order of the learned CIT – A on the issue of not condoning the delay and on the merits of the case of the assessing officer stating that addition has been correctly made as assessee did not file any reply before the assessing officer either during the assessment proceedings or during the penalty proceedings.
9. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the assessment order passed by the learned assessing officer. On consideration of the order of the learned CIT – AV find that assessee has raised the plea that the delay in filing of the appeal has been caused because of the Lack of advice to the assessee by the previous counsel. Therefore, the appeal was neither filed against the original assessment order as well as against the penalty order in time. The assessee has supported the same with filing an affidavit dated 2 January 2018. We fully agree with the observation of the learned CIT – A that the condonation of delay is not the right of the assessee. However, we are also of the view that when the interest of justice and technicalities are pitted against each other, the interest of justice should be carried further ignoring the technicalities involved. Such is the mandate of the honourable Supreme Court in case of Collector, Land Acquisition, Anantnag Vs. Mst. Khatiji reported in 1987 (28) ELT 185 SC. Therefore, according to us the learned CIT – A should have down the delay in filing of the appeal.

10. Even otherwise on the facts of the case the learned assessing officer as per initiated the penalty proceedings holding that assessee has furnished particulars of its income in paragraph number 5 of the assessment order at the time of making the addition. At the time of levy of the penalty by passing an order dated 28th of June 2016, he has levied the penalty as stating in paragraph number 4 of the order that the assessee has concealed the particulars of income/furnished inaccurate particulars of income. Further, in paragraph number 6 of the order he held that assessee has concealed its particulars of income. This fact itself shows that the learned assessing officer is either not sure whether the assessee has furnished inaccurate particulars of income or has concealed the income. Even otherwise he has initiated penalty in the assessment order saying that assessee has furnished inaccurate particulars and has levied the penalty by passing an order u/s 271 (1) © of the act holding that assessee has concealed particulars of income in one paragraph and saying that assessee has furnished inaccurate particulars in another paragraph. Therefore, it is not an apparent that the assessing officer reason sure that what is the charge against the assessee nor is he consistent that whether the assessee has furnished inaccurate particulars of income or has concealed income. In the penalty order in two different paragraphs, he holds assessee having committed both the offences. Therefore, even on this ground the penalty is not sustainable in law.
11. Accordingly, we direct the learned assessing officer to delete the penalty of ₹ 437,445/- levied u/s 271 (1) © of the income tax act.
- Order pronounced in the open court on conclusion of hearing:
12/08/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 12/08/2021.

MEHTA

Copy forwarded to

1. Appellant;

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	12.08.2021
Date on which the typed draft is placed before the dictating member	12.08.2021
Date on which the typed draft is placed before the other member	12.08.2021
Date on which the approved draft comes to the Sr. PS/ PS	12.08.2021
Date on which the fair order is placed before the dictating member for pronouncement	12.08.2021
Date on which the fair order comes back to the Sr. PS/ PS	12.08.2021
Date on which the final order is uploaded on the website of ITAT	12.08.2021
date on which the file goes to the Bench Clerk	12.08.2021
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	