

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "B" BENCH: NEW DELHI**

**(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.3815/Del/2018  
Assessment Year : 2014-15**

Saurabh Singla, K-2, Second Floor, Model Town-II, New Delhi-110009. PAN-AMOPS7206A	vs	ITO, Ward-36(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Sh. Suresh K.Gupta, CA	
<b>Respondent by</b>	Ms. Alka Gautam, Sr.DR	
<b>Date of Hearing</b>	26.08.2021	
<b>Date of Pronouncement</b>	31.08.2021	

**ORDER**

**PER KUL BHARAT, JM :**

This appeal filed by the assessee pertaining to assessment year 2014-15 is directed against the order of Ld. CIT(A)-12, New Delhi dated 07.02.2018.

The assessee has raised following solitary grounds of appeal:-

1. *"The Ld.CIT(A) has erred both on facts and in law in upholding the order of Ld.AO holding the fact that Ld.AO has passed the order without providing reasonable opportunity to the appellant.*
2. *The Ld.CIT(A) has erred both in facts and circumstances of the case in not admitting the appeal on the ground that the same was belated by 57 days ignoring the explanation given by the appellant to support the delay in filling appeal if the date of postal service is treated as the date of service.*
3. *The Ld. CIT(A) has erred both in facts and circumstances of the case in not admitting the additional evidences under rule 46A of IT Rules*

*1962 ignoring the fact that the appellant was prevented by sufficient reason from producing the relevant evidences before the AO during assessment proceedings.*

4. *The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in upholding the addition of Rs 23,27,375/- u/s 68 of the IT Act r.w.s 115BBE of IT Act by disallowing the claim of exemption u/s 10(38) of the LTCG earned on the sale of shares of a listed company disregarding the fact that all the evidences to support the claim were brought on record by the appellant and therefore action of the AO is based on conjectures and surmises.*
5. *The Ld. CIT(A) has erred in upholding the addition of Rs.23,27,375/- which is bad in law as the same has been made without the appellant being provided with the incriminating material and cross examination of the material and statements on the basis of which the Investment of the appellant is characterized as penny stock.*
6. *The Ld. CIT(A) has erred in upholding the addition of Rs.23,27,375/- by simply replying on the reports/ information which are contrary to the evidence submitted by the appellant in support of the transaction of the purchase/ sale of shares.*
7. *The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in upholding the addition of Rs.23,27,375/- by relying on the perception based on the generalised material without applying the same on the appellant with the corroborative facts and in the absence of which the order under appeal is not in conformity with principle of natural justice.*
8. *The Ld. CIT(A) has erred both in law and in facts in circumstances of the case in upholding the addition of Rs.23,27,375/- by relying on the statement of Sh. Sunil Dokania without providing opportunity to the appellant to cross examine such person and the statement does*

*not name the appellant as the beneficiary of accommodation entries and therefore such statement have no evidentiary value.*

9. *The Ld. CIT(A) has erred both on facts and in the circumstances of the case in upholding the deemed addition of commission paid at the rate of 2.5 percent amounting to Rs.58, 184/- u/s 69C of the IT Act r.w.s 115BBE of the IT Act to broker on accommodation entry amounting to Rs.23,27,375/- without any evidence of payment of such commission and substantiating any material available on record to prove the above addition.*
10. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the addition of Rs.17,01,000/- of cash deposit made in bank account as unexplained deposits ignoring the details furnished and explanation given by the appellant.*
11. *The Ld. CIT(A) has erred both in law and in facts of the case in upholding the addition of Rs.65,98,934/- of credit entries in bank accounts excluding cash deposits as unexplained credits ignoring the details furnished and explanation given by the appellant.*
12. *The appellant craves leave to add, delete, modify / amend the above grounds of appeal with the permission of the Hon'ble appellate authority.”*

2. At the outset, Ld. Counsel for the assessee submitted that Ld.CIT(A) had dismissed the appeal of the assessee on the ground of limitation. It was submitted that the assessee filed evidences before Ld.CIT(A) regarding his illness. Ld. Counsel for the assessee also submitted that an affidavit in support of non-receipt of notice was filed but Ld.CIT(A) rejected the appeal without adjudicating the issues on merit. Ld. Counsel for the assessee

submitted that prescription by the Doctors was filed before Ld.CIT(A) but Ld.CIT(A) did not consider the same.

3. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

4. We have heard the rival contentions and perused the material available on record. Considering the fact that Ld.CIT(A) had rejected the appeal of the assessee on the ground of delay in filing of the appeal. Undisputedly, the assessee had not filed any application seeking condonation of delay before Ld.CIT(A). The contention before Ld.CIT(A) was two folds-**Firstly**, that the notice was not received by the assessee. We find that Ld. CIT(A) on this issue has recorded the finding on fact that as per Indian Post tracking record, the notice was delivered to the assessee on 02.01.2017. Therefore, objection of the assessee was duly addressed by Ld.CIT(A). **Secondly**, the assessee had stated that due to ill health, he could not file the appeal. In support of that, he had filed certain prescriptions dated 15.10.2016, 18.10.2016, 17.04.2017 & 19.08.2017 which demonstrated that the assessee was under medical treatment. Therefore, we are of the considered view that looking to the delay in filing the appeal before Ld.CIT(A), coupled with the fact that the assessee was undergoing medical treatment. We find that Ld.CIT(A) ought to have given opportunity for filing application seeking condonation of delay and after filing of such application, Ld.CIT(A) should have considered it sympathetically. Therefore, we set aside the impugned order and restore the appeal to the file of

Ld. CIT(A) to decide it afresh after giving opportunity to the assessee for filing application for condonation of delay which occurred in filing of the appeal before him. The grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes only.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 31<sup>st</sup> August, 2021.

**Sd/-**

**(DR. B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI