

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.928/Del/2020
Assessment Year: 2010-11

Sh. Arjun Singh, C/o- Sanjeev Anand & Associates 77, Navyug Market, Ghaziabad	Vs.	ITO, Ward-1(1), Ghaziabad
PAN :BDGPS9639K		
(Appellant)		(Respondent)

Appellant by	Sh. Sanjeev Agarwal, CA
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	22.12.2021
Date of pronouncement	22.12.2021

ORDER

This is an appeal by the assessee against order dated 29.11.2019 of learned Commissioner of Income Tax (Appeals), Ghaziabad, for the assessment year 2010-11.

2. Briefly stated, the assessee is an individual deriving income from agriculture. Based on certain information, assessment in the case of the assessee was reopened under Section 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and

ultimately assessment was completed under Section 143(3) read with section 147 of the Act, making following additions:

- i. *Long Term Capital Gain of Rs.8,71,238/-*
- ii. *Agriculture income of Rs.1,00,000/-*
- iii. *Interest income of Rs.5,683/-.*

3. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals). However, by the impugned order, learned Commissioner (Appeals) dismissed the appeal *in limine* on the ground that the appeal was not filed within the prescribed time limit.

4. I have considered rival submissions and perused the material on record. It is patent and obvious from the material on record that assessee's appeal was dismissed purely on technical reasons that the appeal was filed with a delay of more than 5 months. It is observed from the order of learned first appellate authority, while explaining the alleged delay the assessee has submitted that the assessment order was not served on him and the assessee became aware of the completion of assessment only when a show-cause notice was issued for imposition of penalty under section 271(1)(c) of the Act and served upon him on 11.04.2018. It was submitted by the assessee that after obtaining

certified copy of the assessment order, the appeal was filed. It appears, learned Commissioner (Appeals) rejected assessee's prayer for condonation of delay on the reasoning that no evidence was brought on record by the assessee to demonstrate that the assessment order and demand notice sent by Speed Post was not served on the assessee. I fail to understand how the assessee can be asked to prove the negative. When the assessee has asserted that he has not received the assessment order and demand notice, it is for the Revenue to establish on record that there was proper service of the assessment order and demand notice on the assessee.

5. Be that as it may, it is a fairly well settled legal principle that when technicalities and justice are pitted against each other, the balance should always tilt towards justice rather than technicality. Thus, when the assessee has offered an explanation to explain the alleged delay, the same cannot be rejected in an arbitrary manner. More so, considering that this is not a case of inordinate delay.

6. In view of the aforesaid, I am inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to the file of learned Commissioner (Appeals) for

de novo adjudication on merits. Needless to mention, the assessee must be provided reasonable opportunity of being heard before deciding the appeal. Grounds are allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 22nd December, 2021

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 22nd December, 2021.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi