

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

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER**

**ITA No. 826/Del/2020  
Assessment Year: 2014-15**

Joginder Singh, C/o Virender Kumar Rastogi, Adv. Near Old Telephone Exchange, Sher Khan Sarai, Civil Lines, Sambhal (U.P.) PAN: EISPS5626G (Appellant)	vs.	Income-tax Officer, Ward Sambhal.  (Respondent)
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Appellant by : Sh. Virender Kumar Rastogi, Adv.  
Respondent by: Sh. Om Prakash, Sr. DR

Date of hearing: 05.05.2022  
Date of order : 13.05.2022

**ORDER**

This appeal filed by the assessee is directed against the order dated 25.11.2019 passed by Id. CIT(A)- Moradabad for the assessment year 2014-15 on the following grounds :

*"1. That the penalty order passed by the LLC's are illegal, unjust and against the actual facts on record.*

*2. That the appellant submitted before the LCIT(A) which is as follows:-*

*Appellant's right leg was injured in accident in the first week of March 2018 and he was not able to walk for nine months approximately therefore he could not*

*attend before the Income tax Officer, Sambhal which is sufficient cause for his non- appearance and not to file the Income Tax Return for the A/Y in question. He was treated by the Dr. S.P. Sharma surgeon Tehsil road, Sambhal who is 80 years old and is suffering from various serious ailment and residing with his daughter Rini Sharma at Delhi. He is not available to issue medical certificate Dr. Rajesh Agarwal surgeon, Sambhal has examined him on his request and mentioned the true facts of accident. From the above it is quite obvious that the appellant was not able to move therefore he could not appear before the LITO on the date fixed either for hearing of the case u/s 142(1) and u/s271(l)(b) of the IT Act. The LCIT(A) believed this facts and allowed the appeal u/s 142(1) of the IT Act.*

*3. That the appellant filed affidavit and on the basis of the contents of the affidavit the LCIT(A)condoned the delay u/s 5 of the I L Act therefore she has acted unjudicially to confirm the appeal in question.”*

2. Learned counsel of the assessee challenging to the imposition of penalty by the Assessing Officer u/s. 271(1)(b) of the Income-tax Act, 1961 (“the Act” for short) submitted that the appellant’s right leg was injured in accident in the first week of March, 2018 and he was not able to walk for 9 months. Therefore, he could not attend the proceedings before the Assessing Officer, Sambhal, which is a sufficient and bona fide cause for his non-appearance and non-filing of return for A.Y. 2014-15. The Id. Counsel also submitted that the assessee is 80 years old and is suffering from various serious ailments and residing with his daughter Ms. Rini Sharma at Delhi. Therefore, the absence of assessee before the Assessing Officer is

bona fide. Ld. Counsel also submitted that the assessee is treated by Dr. S.P. Sharma, Surgeon, Tehsil Road, Sambhal and due to this, the assessee could not attend the proceedings before the Assessing Officer. Therefore, penalty may kindly be cancelled.

3. Replying to the above, learned DR strongly supported the penalty order and submitted that the penalty should be confirmed.

4. On careful consideration of above submissions, I am of the considered view that the assessee is a senior citizen and having various health issues and submitted detailed submissions before the Assessing Officer as well as Id. CIT(A), but the same were not considered in right perspective. Therefore, keeping in view medical problems faced by the assessee, I am of the considered opinion that there was a bona fide cause to support the absence of assessee in response to notice issued by the Assessing Officer. Therefore, penalty imposed u/s. 271(1)(b) of the Act is cancelled.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 13.05.2022.

Sd/-

**(C.M. GARG)**  
**JUDICIAL MEMBER**

Dated: 13/05/2022

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