

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.1744/Del/2019  
Assessment Year: 2010-11

Sh. Rajniish Kumar Tyagi, S/o- Shri Shiv Dutt Singh Tyagi, Village-Morta, Ghaziabad	<b>Vs.</b>	Income Tax Officer, Ward-2(2), Ghaziabad
<b>PAN :ADFPT2153H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Sunil Kumar, FCA
Respondent by	Sh. Vijay Kataria, Sr. DR

Date of hearing	12.05.2022
Date of pronouncement	12.05.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

This is an appeal by the assessee against order dated 30.11.2018 of learned Commissioner of Income Tax (Appeals), Ghaziabad, for the assessment order 2010-11.

**2.** The primary grievance of the assessee is against ex-parte disposal of the appeal, that too, in limine by alleging delay in filing the appeal.

**3.** We have heard the parties and perused the materials on record. The facts emanating on record reveal that based on AIR information that the assessee has purchased immovable property during the year under consideration, the Assessing Officer reopened the assessment under section 147 of the Income-tax Act, 1961 (in short 'the Act'). Alleging that the assessee did not comply with statutory notices issued in course of reassessment proceedings, the Assessing Officer completed the assessment to the best of his judgment under section 147 read with section 144 of the Act vide order dated 29.12.2017, adding back Rs.1,77,75,000/- to the income of assessee. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals).

**4.** As could be seen from the impugned order of learned Commissioner (Appeals), she alleged that the assessee has filed the appeal with a delay of more than one month and the original demand notice issued under section 156 of the Act was not enclosed. She has further observed that the assessee has not made any request for condoning the delay. Thus, holding that the appeal filed by the assessee is barred by limitation, learned

Commissioner (Appeals) dismissed the appeal in limine without deliberating on the merits.

**5.** Before us, it is the contention of learned counsel for the assessee that, in fact, there is no delay in filing the appeal. Further, he submitted, reasonable opportunity of being heard was not granted to the assessee by learned Commissioner (Appeals).

**6.** Having perused the materials on record, it is noticed that in the column no. 14 of Form No. 35 of the memorandum of appeal filed before learned Commissioner (Appeals), the assessee has specifically stated that there was no delay in filing the appeal. However, learned Commissioner (Appeals) has observed that notice of demand was served on the assessee on 30.12.2017 and the assessee filed the appeal after a delay of more than one month. It is further observed, as per learned Commissioner (Appeals) own observation, a single notice dated 12.11.2018 was issued to the assessee to explain the delay in filing the appeal. It is the assertion of assessee before us that no such notice was ever received by him.

**7.** Thus, keeping in view assessee's contention that there is no delay in filing the appeal before learned Commissioner (Appeals) and no opportunity of hearing was granted to the assessee, in the

interest of fair play and justice, we deem it appropriate to restore this issue to the file of learned Commissioner (Appeals) to examine assessee's claim that the appeal was filed in time. In case, there is any delay in filing the appeal, the assessee must be given a reasonable opportunity to explain the cause of delay. Only after providing reasonable opportunity of being heard to the assessee, learned Commissioner (Appeals) may proceed to decide the appeal. We further make it clear, we have not made any observations on the merits of the issues raised in the present appeal, which are left upon to be decided by learned Commissioner (Appeals), after admission of assessee's appeal for adjudication on merits. Grounds are allowed for statistical purposes.

**8.** In the result, the appeal is allowed for statistical purposes.

***Order pronounced in the open court on 12<sup>th</sup> May, 2022***

***Sd/-***  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 12<sup>th</sup> May, 2022.

RK/-

Copy forwarded to:

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

5. DR

Asst. Registrar, ITAT, New Delhi