

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 5515/DEL/2019
[Assessment Year: 2014-15]

Ashok Kumar Singh, R-7, Raj Kunj, Raj Nagar, Ghaziabad. PAN- ARSPS0531M	<u>Vs</u>	Income-tax Officer, Ward 1(1), Ghaziabad.
APPELLANT		RESPONDENT
Appellant by	None	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	11.05.2022	
Date of pronouncement	19.05.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), Ghaziabad, dated 26.03.2019, pertaining to the assessment year 2014-15. The assessee has raised following grounds of appeal:

- “1. *The order passed by the A.O. is in bad in law and against the cannon of taxation.*
2. *The A.O. has ignored of law and interpreted wrongly.*
3. *The A.O. has vitiated by the fact, finding and reached on assessment only on the presumption and assumptions and not based on any relevant evidences or circumstances.*

4. *The AO has not provided the opportunity to being heard.*
5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law by out rightly dismissing the appeal as out of time(i.e. delayed by 38 days), thereby ignored decision in the case of M/s Onkar chandra Pankaj Kumar, Pittorgarh V/s Commissioner of sales Tax where The High Court has accepted to allow the delay on part of counsel of the assessee and the assessee should not be made to suffer for the inaction of his agent, the Advocate engaged by him.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law as the reason has not accepted by the CIT(A) by concluding that the appellant is casual in nature and there is unjustifiable delay in filing the appeal while the delay was on the part of counsel of the assessee due to involvement in time barred GST/VAT returns.*
7. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts that the AO has information about sale of 12 flats and we have declared sale of 13 flats. Half share related to assessee.*
8. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts that the AO has applied 8% profit rate on total receipts of Rs.3,99,94,820.00 while we have declared income at the rate 4% on total receipts.*
9. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts that the AO has applied 8% profit rate on the basis of case of Sh. Ashok Kumar, 32, Arjun nagar Ghaziabad PAN-ADPPK0902M which was not confronted to us by the AO.*
10. *That having regard to the facts and circumstances of the case, AO has erred in law and on facts that we have made 17 units on the plot. It is not allowed much unit on small size of plots i.e. 350 sq. mtr. So the unit made by us not fully authorized. Due to above reason our construction site, aforesaid building, was sealed by the Ghaziabad Development Authority. Due to sealing by Ghaziabad Development Authority, the market price of got lower in the market. The project also delayed due to above reasons and cost of construction also got higher.*
- 11 *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts as we were deprived from the*

opportunity of being heard.

12. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law by issuing ex-parte order without considering the facts of the case.

13. That in any case and any view of the matter, action of Ld. and without giving adequate opportunity of hearing, by recording incorrect facts and findings and the same is not sustainable on various legal and factual grounds.

14. That having regard to the facts and That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

2. No one appeared on behalf of the assessee at the hearing. It is seen from the record that on the last date of hearing also there was no representation on behalf of the assessee. The notice of hearing sent to the assessee through speed post has been returned with the remark “left”. The appeal of the assessee is heard ex parte, qua the assessee and in that process I have heard learned DR and gone through the material available on record.

3. Learned DR supported the orders of the authorities below and pointed out that the learned CIT(Appeals) has dismissed the appeal of the assessee being barred by time.

4. I have heard learned DR and perused the material on record. It is seen that the learned CIT(Appeals) has recorded that the appeal filed by the assessee was barred by time. It was late by more than one month. Therefore, on this ground

alone the learned CIT(Appeals) dismissed the appeal of the assessee, by observing as under:

“2. The appellant filed the appeal on 09.03.2018 which is found to be delayed by more than 1 month. The notice for explaining the delay was sent to the appellant on 12.11.2018 at the address given in Form 35 for the communication through the speed post and e-mail. The appellant filed his reply on 20.11.2018 as under:

We enclose herewith an appeal under section 246 of the Income Tax Act 1961 against the order of the Income Tax Officer Ward-1 (1) Ghaziabad, relating to the Assessment Year 2014-15 passed under section 147/143(3) of the Income Tax Act 1961 on 29-12-2017 which was served on assessee on 31-12-2017 and it was handed over to us. Though this appeal should have been filed in the office of the Commissioner of Income Tax (Appeal), Ghaziabad on or before the 30-01-2018, but it could not be so filed because of involvement in time barred. GST Returns, Meanwhile we forgot to file the appeal. When .assessee came to us to Know the status about the same it came to our notice that the appeal was not filed. Hence delay of thirty eight days (38) occurred in filing the appeal.

Reliance is placed in the case of M/s Onkar .Ghandra Pankaj Kumar, Pittorgarh V/s. Commissioner of Sales Tax (copy enclosed) in which it was held that;

“in the present set up in which the courts are working in India, it is adverse system where the parties generally appear through their Advocates. The obligation of the parties is to select his Advocate, brief him, pay the fee demanded by him and trust the learned Advocate to do the rest of things. After engaging a lawyer the parties may feel confident that all that he had to do has been done by him and rest is to be done by the advocate who is engaged by him. Tribunal has not found that so far as the assessee is concerned he has been negligent in prosecuting his appeal. The Tribunal ought to have appointment a justice oriented approach and the assessee should not be made to

suffer for the 7action of his agent, the Advocate engaged by him.

We, therefore, pray that the delay in filing the appeal should be condoned and the appeal should be treated as filed within the allowed time.

2.1. Examination of facts reveals that demand notice was duly served upon appellant on 31.12.2017. The appellant preferred the appeal on 09.03.2018 which is delayed by more than 1 month. In the reason for delay in filing the appeal the appellant has stated that Advocate was busy in filing the GST returns and forgot to file the said appeal. The reason for delay in filing the appeal by the appellant is casual in nature. Thus there is unjustifiable delay in filing the appeal. It is felt that appellant has not acted with reasonable diligence in prosecuting the appeal. Condonation of delay is not a matter of right since appellant has failed to show reasons of delay on last day of limitation and thereafter for each day. Reliance in this regard is placed on decision in the case of Rankak & Ors, Vs. Rewa Coalfields Ltd. AIR 1962 SC 361 JCIT vs Tractors & Farm Equipments Ltd. (IT AT, Chennai-TM) 104 ITD 149, Madhu Dadha vs ACIT (Mad) 317 ITR 458. The appellant failed to draw the similarity of facts and circumstances of the case laws relied upon to his own case. For example the appellant failed to substantiate that whether the papers were handed over to the Advocate and whether he paid to the Advocate or not. Considering above facts and circumstances this appeal preferred by the appellant is treated as non-est being defective.”

5. Looking to the facts and circumstances of the case, more particularly in the interest of principles of natural justice, the assessee ought to have been given an opportunity to represent his case. There is nothing on record suggesting that there was any deliberate attempt on behalf of the assessee to take advantage of filing the appeal late. Considering the facts and circumstances of the case, I condone the delay in filing the appeal before the CIT(Appeals) and restore the grounds to the

file of the learned CIT(Appeals) for decision on merit, of course, after providing reasonable opportunity of being heard to the assessee.

6. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in open court on 19th May, 2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI