

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

**BEFORE,
SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.3011/Del/2019
(ASSESSMENT YEAR 2013-14)**

M/s R.H. Construction Shop No.9, Basement Ekta Complex Moradabad-244 001 (U.P) PAN-AAIFR 9469C	Vs.	Income Tax Officer, 2(2) Moradabad
(Appellant)		(Respondent)

Appellant By	None
Respondent by	Sh. Toufel Tahir, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM:

(A) This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals), Moradabad [Ld. CIT(A)", for short], dated 29.01.2019 for Assessment Year 2013-14.

Grounds taken in this appeal of Assessee are as under:

"1. Ld. Commissioner of Income Tax (Appeals) has erred in law and in the circumstances of the case in not accepting the application for condonation

of delay in filing of appeal for penalty levied u/s 271(1)(c) of the Income Tax Act and dismissed the appeal.

2. Any other grounds of appeal which may be taken at the time of hearing.”

(B) In this case, the assessment order dated 29.03.2016 was passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 wherein the total income was determined at Rs.55,24,540/- as against returned income of Rs.7,04,377/-. The assessee filed appeal before the Ld. CIT(A) against the aforesaid assessment order. Vide impugned appellate order dated 29.01.2019, the Ld. CIT(A) dismissed the assessee's appeal in limine, refusing to condone the delay in filing of the appeal in the office of the Ld. CIT(A).

(C) On perusal of the impugned appellate order dated 29.01.2019, we find that the following reason was advanced by the assessee before the Ld. CIT(A) with the prayer for condoning the delay in filing the appeal. The relevant portion of the impugned appellate order dated 29.01.2019 of Ld. CIT(A) is reproduced below.

“3.0 Assessee has mentioned the reason of late filing of appeal alongwith his reply dated 11.12.2018, which is reproduced verbatim as under:

“The documents in original were handed over to the employee of Counsel Shri. K.A. Saxena, but he did not handed over the documents to his counsel for preparation of appeal documents. Thereafter, the Counsel fell ill in the month of April & May 2017 so he could not submit the appeal documents within prescribed

time. The delay in submission of appeal is not attributable to the assessee but it was on account of its Counsel. It is therefore, requested that delay of 242 days in submission of appeal may kindly be condoned. ”

4.0 During the course of hearing, the AR of the appellant further submitted that he takes advice and assistance from his senior practitioner Shri A.K. Jain. However that time Shri A.K. Jain was suffering from Tongue Cancer. He had gone for major operation on 12.10.2016. After completion of treatment, he arrived at Moradabad in mid January 2017 but was not in such a condition that any matter could be discussed with him. After his recovery his advice was taken, but thereafter, the counsel himself remained bed ridden for the months of April 2017 and May 2017.”

(D) In the absence of any representation from the assessee’s side at the time of hearing before us, we heard the Ld. Senior Departmental Representative (“DR” for short) for Revenue. He submitted that the reasons advanced by the appellant assessee with the request for condonation of delay in filing of appeal in the Ld. CIT(A) office are reasonable and sufficient. He further submitted that the Ld. CIT(A) may be directed to condone the delay in filing of the appeal and to pass a fresh order in accordance with law, on merits, after providing a reasonable opportunity to the assessee.

(E) In view of the foregoing, we direct the Ld. CIT(A) to condone the delay in filing of the assessee’s appeal in the office of the Ld. CIT(A). We further direct the Ld. CIT(A) to pass a fresh appeal order on merits after providing a reasonable opportunity to the appellant

assessee. This appeal is decided in accordance with aforesaid directions.

(F) In the result, this appeal is partly allowed for statistical purposes.

Our order was already pronounced orally on 25.05.2022 in Open Court, in the presence of Sr. DR for Revenue, after conclusion of the hearing. This written order is now signed today on 26.05.2022.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 26.05.2022

Pk

Copy forwarded to:

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

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI