

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 8750/Del/2019
(Assessment Year : 2010-11)

Amit Gupta D-63, GF, Kaushambi, Ghaziabad, UP-201 012 PAN : AHKPG 6341 B (APPELLANT)	Vs.	ITO Ward-1(5), Ghaziabad (RESPONDENT)
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Assessee by	Mohammad Ashraf, C.A.
Revenue by	Shri Zahid Parvez, Sr. D.R.

Date of hearing:	09.06.2022
Date of Pronouncement:	09.06.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 09.09.2019 of the Commissioner of Income Tax (Appeals)-Ghaziabad relating to Assessment Year 2010-11.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO has noted in the assessment order that on the basis of AIR information it was noticed that

assessee has sold an immovable property for sum of Rs.1,22,87,880/- jointly with Atul Gupta during the F.Y. 2009-10 but had not paid taxes. He noted that the assessee was given plenty of opportunities to explain the capital gain liability about his share of gains but he failed to make any compliance. Therefore the case was reopened u/s 147 and notice u/s 148 dated 21.03.2017 was issued. Thereafter, several notices were issued which were served on assessee but had remained un-complied. AO thereafter passed order u/s 147 r.w.s 144 of the Act vide order dated 26.10.2017 and determined the total income at Rs.61,63,940/- by *inter alia* making addition of Short Term Capital Gains of assessee's share.

4. Aggrieved by the order of AO, Assessee carried the matter before CIT(A) who vide order dated 09.09.2019 in Appeal No.619937710170518 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“Under the facts and circumstances of the case, the Ld. CIT(A) grossly erred on facts as well as in law in confirming the reassessment order which is ex-facie illegal arbitrary and without jurisdiction being against the principles of natural justice and against the provisions of IT Act, 1961.*
2. *The Ld. CIT(A) grossly erred on facts as well as in law in confirming the reassessment order inspite of the fact that notice issued u/s 148 is ex-facie illegal, arbitrary and without jurisdiction and hence the reassessment order is also ex-facie illegal, arbitrary and without jurisdiction.*

3. *The Ld. CIT (A) has grossly erred on facts as well as in law in rejecting the application of condonation of delay filed by the appellant.*
4. *The Ld. CIT (A) has grossly erred on facts as well as in law in confirming the addition of Rs. 61,43,940/- without appreciating the fact that the Ld. AO passed order under section 144 of the IT Act 1961 without giving proper and effective opportunity of being heard.*
5. *The Ld. CIT (A) grossly erred in law as well as on facts in not appreciating the facts that the action of the Ld. AO in completing assessment u/s 144 / 147 is bad in law on account of non-issuance of notice u/s 143(2) of the IT Act and, therefore, the order deserves to be quashed and annulled.*
6. *The Ld. CIT (A) grossly erred in law as well as on facts in dismissing the ground of the appellant that the Ld. AO treat the entire sale consideration amount as capital gain without detecting the cost of acquisition of property as well as cost of improvement in property.*
7. *The Ld CIT(A) has grossly erred on facts as well as in law in confirming the charging of interest under various sections of the IT Act, 1961.*
8. *The appellant carves leave to add, alter, modify and withdraw any ground of appeal before or during the appellate proceedings.”*

5. Before us, Learned AR submitted that assessee could not appear before the AO as during that period the mother of assessee was unwell and thereafter she expired. He submitted that the AO passed order without considering the submissions of assessee. Before us, Learned AR thereafter submitted that there was delay in filing the appeal before CIT(A) and CIT(A) did not condone the delay and dismissed the appeal of assessee. He submitted that the delay in filing the appeal before CIT(A) was unintentional and the delay

be condoned. He further submitted that CIT(A) has also not passed a speaking order and has dismissed the appeal of the assessee, *in limine*, without considering the issue on merits and one more opportunity be granted to assessee to plead his case and further he undertakes to appear before the authorities and furnish all the required details to support his contentions.

6. Learned DR on the other hand supported the order of AO.

7. We have heard the rival submissions and perused the material available on record. Before us, it is the contention of the Learned AR that the due to the death of the assessee's mother there was no appearance before AO and CIT(A) has not decided the appeal on merits and has not condoned the delay in filing the appeal. We find that various courts have held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserve to be preferred and that rendering substantial justice should be the paramount consideration rather than rejecting it on hyper technicalities. It would be relevant here to refer to the observation made by Hon'ble Bombay High Court in the case of Shitaldas Motiwani vs. DGIT reported in 2010, 323 ITR 223 (Bom.)

“15.... The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merits. The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to

benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. ”

8. In the light of the aforesaid observations of Hon' ble Bombay High Court and in the absence of any material placed on record by Revenue to demonstrate that the delay in filing the appeal was with mala-fide intention, we are of the view that the delay in filing the appeal by the Assessee cannot be considered to be with malafide intention or to be deliberate on his part. We are, therefore, of the view that the delay in filing the appeal before Ld. CIT(A) needs to be condoned. We accordingly condone the delay. The perusal of CIT(A) order reveals that CIT(A) has passed an *ex parte* order without deciding the issue on merits. Sub Section (6) of Section 250 of I. T. Act mandate the CIT(A) to state the points in dispute and thereafter assign the reasons in support of his conclusion. We are of the view that by dismissing the appeal without considering the issue on merits, Learned CIT(A) has failed to follow the mandate required in Sub Section (6) of Section 250 of the Act. Further it is also a well settled principle of natural justice that sufficient opportunity of hearing should be offered to the parties and no parties should be condemned unheard.

9. Since Ld. CIT(A) has not decided the issue on merits, we restore the matter back to the file of Ld. CIT(A) and direct him to decide the issue on merits and in accordance with law. Needless to state that Ld. CIT(A) shall grant adequate opportunity of hearing to both the parties. Assessee is also directed to promptly furnish the details called for by the authorities. **Thus, the ground of assessee is allowed.**

10. Since, we have condoned the delay and set aside the issue back to the file of Ld. CIT(A), the other Grounds raised on merits requires no adjudication at present and therefore, not adjudicated.

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

Order pronounced in the open court on 09.06.2022

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 09.06.2022

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Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI