

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI "C" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA Nos.1567 & 1568/Del/2020**

**[Assessment Year : 2009-10]**

Late Jile Singh through L/H Ranjeet Singh, Ch No.206-207, Aansal Satyam, RDC, Rajnagar, Ghaziabad, Uttar Pradesh-201002. <b>PAN-BEIPJ5363Q</b>	vs	ITO, Ward-1(3), Ghaziabad.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Akhilesh Kumar, Adv.	
<b>Respondent by</b>	Shri Gurpreet Shah Singh, Sr.DR	
<b>Date of Hearing</b>	26.07.2022	
<b>Date of Pronouncement</b>	26.07.2022	

**ORDER**

**PER KUL BHARAT, JM :**

Both appeals filed by the assessee for the assessment year 2009-10 are directed against the orders of Ld. CIT(A), Ghaziabad dated 31.10.2018 and 28.09.2018, wherein one appeal is filed against the quantum proceedings and another appeal is filed against the penalty proceedings respectively. Since identical grounds have been raised, both appeals were taken up together for hearing and are being disposed off by way of consolidated order for the sake of brevity.

**ITA No.1567/Del/2020 [Assessment Year : 2009-10]**

2. First we take up the assessee's appeal in **ITA No. 1567/Del/2020** pertaining to **Assessment Year 2009-10**. The assessee has raised following grounds of appeal:

1. *“Because, order of Id. CIT(A) is bad in law and is against the facts and circumstances of the case.*
2. *Because, Id. CIT (Appeals) erred in dismissing the appeal in limine by not condoning delay of 176 days by way of ex-party order in as much as solitary notice dt. 11.10.2018 is never received by the legal heir who had no knowledge about the matter as assessee was also not keeping well and expired soon after filing the appeal on 21.01.2018.*
3. *Because, Id. CIT(Appeals) failed to exercise discretion judiciously despite the fact that assessee stated reason for the delay in the appeal memo itself that assessee was an illiterate person having no knowledge of tax matters and was also not keeping well.*
4. *Because, without prejudice to above on merits Id. AO has erred in computing capital gain on the sale of land through ex-party order, which was an agricultural land and not being an asset as per sec. 2 (14) as such was not subject to capital gain. Hence levy of tax is beyond the provisions of the law.*
5. *Because, in addition to above Id. AO erred in computing the capital gain without allowing cost of acquisition in terms of sec. 48 of the Act.*
6. *Because, part of land of the same khasra is accepted as agricultural land by revenue after remand of the case by honorable ITAT in case of Ajay Kumar Maheshwari in ITA NO. 2373/2013 and no tax is levied.*

*Therefore, it is very respectfully prayed that this hon’ble court may kindly be pleased to condone delay and set aside the order under question with the directions deemed fit to Id. AO or Id. CIT(A) as the case may be to hear the matter on merits.”*

3. At the outset, Ld. Counsel for the assessee submitted that the assessment order as well as the order of Ld.CIT(A), is ex-parte to the assessee. He submitted that the assessee was suffering from serious ailment hence,

could not file the appeal in time before Ld.CIT(A). The assessee expired on 21.01.2018 due to illness as Death Certificate is placed on record by the Legal Heir of the assessee. Ld. Counsel for the assessee submitted that under the facts of the present case, a liberal view may be taken and the delay be condoned. He further submitted that the matter may be restored to the authorities below.

4. On the contrary, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

5. We have heard the contentions of Authorized representatives of the parties and perused the material available on record. Considering the facts placed on record, we are of the considered view that there was a reasonable cause in filing the appeal belatedly before Ld. CIT(A). Therefore, to subserve the principal of natural justice and respectfully following the judgement of Hon'ble Supreme Court in the case of *Collector of Land Acquisition vs Mst . Katiji & Ors. 167 ITR 471*, we condone the delay in filing the appeal before the CIT(Appeals) and restore the grounds to the Ld. CIT(A) for decision on merit, after providing reasonable opportunity of being heard to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

**ITA No.1568/Del/2020 [Assessment Year : 2009-10]**

7. Now, we take up the assessee's appeal in **ITA No. 1568/Del/2020** pertaining to **Assessment Year 2009-10**. The assessee has raised following grounds of appeal:-

1. *“Because, order of Id. CIT(A) is bad in law and is against the facts and circumstances of the case.*
2. *Because, Id. CIT (Appeals) erred in dismissing the appeal ex-parte in as much as notices were never received by the legal heir who had no knowledge about the matter as assessee was not keeping well and expired soon after filing the appeal on 21.01.2018.*
3. *Because, without prejudice to above Id. AO failed to appreciate the fact that the notice initiating the proceeding is without specifying the specific limb of the provision and is invalid as per the settled law hence erred in sustaining the penalty.*
4. *Because, Id. CIT(A) failed to appreciate that neither assessee has concealed particular of income nor furnished inaccurate particulars as no return of income is filed in the absence of any taxable income.*  
*Because, Id. CIT(A) further erred in not appreciating the fact that addition of capital gain on the sale of agriculture land itself is wrong and hence imposition of penalty on the basis of such illegal addition is also illegal.*  
*Therefore, it is very respectfully prayed that this hon'ble court may kindly be pleased set aside the order under question with the directions deemed fit to Id. AO or Id. CIT(A) as the case may be to hear the matter on merit.”*

8. The facts and grounds are identical as were in **ITA No.1567/Del/2020** pertaining to **Assessment Year 2009-10**. The Ld. Representatives of the parties have adopted the same arguments as were in ITA No.1567/Del/2020

[Assessment Year 2009-10]. As we have condoned the delay for the same reasoning, delay in filing appeal before Ld.CIT(A) is hereby, condoned. The grounds of appeal are restored to the Ld. CIT(A). Ld.CIT(A) is directed to decide the issue afresh on merit. Needless to say that the Legal Heir of the assessee would not seek adjournment without any reasonable cause. Thus, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

10. In the final result, both appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 26<sup>th</sup> July, 2022.

***Sd/-***

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

***Sd/-***

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI