

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

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.7571/Del/2019

Assessment Year: 2009-10

|   |            |   |
|---|------------|---|
| Puran Singh,<br>253 Village Sultanpur,<br>Khurja Junction,<br>Tehsil- Khurja<br>PIN: 203132 | <b>Vs.</b> | ITO, Ward-3(3),<br>Bullandshahr<br>(UP) |
| <b>PAN :EYPHS7625N</b>  |            |   |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>                     |

|               |                         |
|---------------|-------------------------|
| Appellant by  | N o n e                 |
| Respondent by | Shri Om Parkash, Sr. DR |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 13.07.2022 |
| Date of pronouncement | 29.07.2022 |

**ORDER**

This is an appeal by the assessee against order dated 12.06.2019 of learned Commissioner of Income-Tax (Appeals), Ghaziabad pertaining to assessment year 2009-10.

2. When the appeal was called for hearing, none appeared on behalf of the assessee.

3. On perusal of record, it is observed, though, multiple opportunities have been granted to the assessee, however, he has failed to avail them.

4. In view of the aforesaid, I proceed to dispose of the appeal ex parte qua the assessee after hearing the learned Departmental Representative and based on material available on record.

5. I have heard learned Departmental Representative and perused the material on record.

6. As could be seen, against the assessment order passed by the assessing officer under Section 144 read with section 147 of the Act, assessee preferred an appeal before learned Commissioner (Appeals). However, assessee's appeal was dismissed in limine, as, according to learned Commissioner (Appeals), it was not filed within the prescribed period of limitation.

7. On a perusal of impugned order of learned Commissioner (Appeals), it appears that assuming that there is delay of more than one year in filing the appeal, learned Commissioner (Appeals) has dismissed assessee's appeal. However, in the Memorandum of Appeal in Form No. 35 filed before learned Commissioner (Appeals), assessee has mentioned the date of service of the assessment order and notice of demand as 22.01.2018. Whereas, learned Commissioner (Appeals) has observed that the assessment order and demand notice were served

on the assessee on 29.10.2016. In reply to show cause notice issued by learned Commissioner (Appeals) regarding delay, assessee has specifically submitted that since it did not receive the original assessment order and the demand notice, it applied for certified copy and the certified copy of assessment order and notice of demand was received by him on 22.01.2018 and the appeal was filed on 28.01.2018.

8. Considering the fact that the allegation of delay has been disputed by the assessee and in the interest of justice, it is desirable to decide the appeal on merits, I set aside the impugned order of learned Commissioner (Appeals) and restore the issues back to learned first appellate authority for deciding on merits after due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

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

***Order pronounced in the open court on 29<sup>th</sup> July, 2022.***

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

Dated: 29<sup>th</sup> July, 2022.  
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

| <b>Sl. No.</b> | <b>Particulars</b>   | <b>Date</b> |
|----------------|--|-------------|
| 1.             | Date of dictation (Order drafted through Dragon software):                                 | 26.07.2022  |
| 2.             | Date on which the draft of order is placed before the Dictating Member:                    | 28.07.2022  |
| 3.             | Date on which the draft of order is placed before the other Member:                        | 29.07.2022  |
| 4.             | Date on which the approved draft of order comes to the Sr. PS/PS:                          | 29.07.2022  |
| 5.             | Date of which the fair order is placed before the Dictating Member for pronouncement:      | 29.07.2022  |
| 6.             | Date on which the final order received after having been singed/pronounced by the Members: | 29.07.2022  |
| 7.             | Date on which the final order is uploaded on the website of ITAT:                          | 29.07.2022  |
| 8.             | Date on which the file goes to the Bench Clerk   | 29.07.2022  |
| 9.             | Date on which files goes to the Head Clerk:  |             |
| 10.            | Date on which file goes to the Assistant Registrar for signature on the order:             |             |
| 11.            | Date of dispatch of order:   |             |