

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1133/DEL/2020  
Assessment Year 2010-11

Ashok Kumar, Opp. FCI Godown, Hari Enclave, Bulandshahr.	v.	Income Tax Officer, Ward-3(1), Bulandshahr
TAN/PAN: AHNPK4113K		
(Appellant)		(Respondent)

Appellant by:	Shri Somil Agarwal, Adv. Shri Shrey Jain, Adv.		
Respondent by:	Shri Kanav Bali, Sr.D.R.		
Date of hearing:	14	07	2022
Date of pronouncement:	02	08	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals), Ghaziabad ['CIT(A)' in short] dated 31.08.2019 arising from the assessment order dated 29.12.2017 passed by the Assessing Officer (AO) under Section 144/147 of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The grounds of appeal raised by the assessee reads as under:

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in dismissing the appeal of assessee in limine by treating it as non-est being defective and that too without any basis and without providing the opportunity of being heard and in violation of principles of natural*

*justice.*

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in dismissing the appeal of assessee in limine, is bad in law and against the facts and circumstances of the case.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the penalty of Rs.2,93,859/- imposed by Ld. AO u/s 271(l)(c) of Income Tax Act, 1961 and more so when the same is not tenable on various legal and factual ground.*

4. *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.”*

3. When the matter was called for hearing, the ld. counsel for the assessee pointed out that the appeal of the assessee has been dismissed by the CIT(A) on the ground that there is a delay of more than four months for filing of appeal for which no cause for condonation has been shown to exist by the assessee. The first appellate order has been thus passed *in limine* against the assessee. In this context, it was pointed out that the order under Section 271(1)(c) was not served upon the assessee. The assessee obtained a certified copy thereof by making a request to the Assessing Officer, the certified copy was delivered on 30.01.2018. The assessee became privy to the impugned penalty order only on that date the appeal was filed on 24.11.2018. Hence, the appeal was actually filed in time when reckoned from the date of actual service of penalty order in question. It was thus submitted that the basis for denial of relief by the CIT(A) and passing summary order as a consequence does not exist. The ld. counsel thus sought restoration of appeal before the CIT(A) for adjudication on merits.

4. On the face of these facts narrated on behalf of the assessee, we consider it appropriate to restore the matter back to the file of the CIT(A) for adjudication on merit. The assessee has demonstrated the absence of delay which appears satisfactory. Therefore, the alleged delay in filing the appeal before the first appellate authority stands condoned for paving the way for disposal on merit. It shall be open to assessee to adduce such evidences and furnish such submissions and explanations as may be considered expedient for disposal of appeal on merits by the CIT(A). The assessee is cautioned to attend the proceedings before the CIT(A) without any demur. Thus, we restore the issue back to the file of the CIT(A) for fresh adjudication.

5. In the result, the appeal of the Assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 02/08/2022.**

Sd/-

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

DATED: **02/08/2022**

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**