

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 3592/DEL/2019 (A.Y 2014-15)

Shri Surender, C/o. Shri Kapil Goel, F-26/124, Sector : 7, Rohini, Delhi – 110 085. PAN No. CFNPS6413R (APPELLANT)	Vs.	Income Tax Officer, Ward : 4 (3) Gurgaon. (RESPONDENT)
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Assessee by :	N o n e;
Department by:	Shri R. S. Yadav, Sr. D. R.;

Date of Hearing	29.08.2022
Date of Pronouncement	02.09.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2014-15 against the order of the Id. Commissioner of Income Tax (Appeals)-I, Gurgaon, dated 24.09.2018.

2. The assessee has raised the following grounds of appeal:-

"1. That on facts and circumstances of the case and in law, action of Ld AO in reopening of the case which is made in violation of

mandatory jurisdictional conditions stipulated under the Act is bad in law and consequentially all subsequent proceedings including orders passed by Id AO and Id CIT-A are also bad in law.

1.1 That on facts and circumstances of the case and in law, no jurisdictional notice u/s 143(2) was ever issued and served on correct address disclosed in ITR of subject period (also same address in earlier year ITR and subsequent year ITR, also assessment order framed at correct address) as it is patent from 143(2) notice dated 28/08/2015 copy now obtained in file inspection which lack of valid issue and service of notice u/s 143(2) at correct address makes all subsequent proceedings including orders passed by Id AO and Id CIT-A are also bad in law (affidavit of assessee also enclosed);

2. That on facts and circumstances of the case and in law, Id CIT-A seriously erred in dismissing the appeal for purported delay when in fact firstly there was no delay and secondly just due to sheer lack of legal competence on part of counsel representing before Id. CIT-A out of abundant caution delay condonation petition was filed and thirdly all through appeal proceedings were extensively conducted on merits of the case as evident from remand report dated 17/07/2018 and Id CIT-A letter dated 18/05/2018 and 03/07/2018 and 16/08/2018 which exhibit Id CIT-A from beginning conducted proceedings on merits of the case and lastly assessment order was only obtained by certified copy on 31/08/2017 and accordingly appeal u/s 246A was timely filed within prescribed 30 days time limit from date of obtaining of certified copy of assessment order on 12/09/2017 as assessee nowhere read any assessment order from office of Ld. AO.

3. That on facts and circumstances of the case and in law, Id CIT-A erred in confirming the addition of Rs 99,24,760 as income from undisclosed sources without appreciating that Ld AO made serious arithmetic mistake while taking figure of cash deposit of Rs.84,80,000 in Sarva Haryana gramin Bank whereas correct figure is Rs 42,40,000 thus depicting entire assessment is made without application of mind and entire assessment is made against the basic principles of law and that too without valid issue and service of jurisdictional notice u/s 143(2) of the act.”

3. None appeared for the assessee, it is found from the order sheet that even in the previous occasion none appeared on behalf of the assessee. By looking into the grounds of Appeal and the material on record, we deem it fit to dispose of the assessee's appeal after hearing the Ld. DR.

4. Brief facts of the case are that, the assessee filed returned declared income of Rs. 7,10,360/- the case of the assessee selected for scrutiny and notices have been issued as required. The assessment proceedings have been initiated against the assessee, an assessment order came to be passed on 14/12/2016 against the assessee by making an addition of Rs. 99,24,760/- by treating the same from undisclosed sources on the ground that the assessee has failed to explain the nature and source of cash deposited to the bank accounts of the assessee.

5. As against the assessment order dated 14/12/2016, the assessee has preferred an Appeal before the CIT(A). The Ld.CIT(A) vide order dated 24/09/2018 dismissed the Appeal filed by the assessee on the ground of delay in latches.

6. We have heard the Ld. DR, perused the material on record and gave our thoughtful consideration. The assessee has suffered an assessment order dated 14/12/2016, but the assessee has challenged the same before the CIT(A) with a delay of 224 days. It is the case of the assessee before the Ld.CIT(A) for condoning the delay is “that the assessee was under the impression that his previous counsel is well presenting the case before the Ld. Income Tax Officer. His Counsel never told the assessee that case was decided ex-parte. Whenever, the assessee asked about the demand raised by the Department, his counsel told him he will get it waived from the Department. Since, no result obtained by the previous counsel, the assessee contacted new counsel who has approached the authority, applied for the certified copy and received the same on 31/08/2017. Immediately filed the Appeal before the CIT(A).”

7. It is seen from the order of the Ld.CIT(A) that the Ld.CIT(A) has dismissed the Appeal not being convinced with the reasons assigned by the assessee for condoning the delay. We are of the considered opinion that the Ld.CIT (A) ought to have applied liberal view in condoning the delay for the reasons stated by the assessee for condoning the delay and should have decided the matter on merit. Therefore, in the interest of justice, we deem it fit to condone the delay of 224 days in filing the Appeal before the Ld.CIT (A) by allowing the Ground No. 2 of Appeal for statistical purpose. Accordingly we condone the delay of 224 days delay in filing the Appeal before the CIT(A) and direct the CIT(A) to decide Appeal filed by the assessee on merits in accordance with law. All the contentions of the assessee are kept open.

8. Since, we have allowed Ground No. 2 for statistical purpose by remitting the matter to the file of Ld.CIT(A) for de-novo consideration on merit, other grounds of Appeal of the assessee on merits requires no adjudication.

9. In the result, the Appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on : **02/09/2022.**

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 02/09/2022

**R. N* Sr. PS*

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI