

**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. 488/DEL/2020 (A.Y 2008-09)

Shri Dinesh Babu Saxena, S/o. Late Shri Fakir Chand Saxena, A-49, Oxame NRI City, Omega-II, Greater Noida [U.P.] PAN No. AUJPS0900J (APPELLANT)	Vs.	Income Tax Officer, Ward : 1 (2) Ghaziabad. (RESPONDENT)
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Assessee by :	Employee of assessee;
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 2008-09 against the order of the Id. Commissioner of Income Tax (Appeals), Ghaziabad, dated 29.11.2019.

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

- “1. That the Ld. CIT(A), Ghaziabad erred in law, on facts and in surrounding circumstances in dismissing the penalty appeal “in limine” by treating it “nonest being defective” merely on venial technical pleas of delay in filing of appeal coupled with non-furnishing of original notice of demand, leading to miscarriage of natural justice.*
- 2. That in doing so, the Ld. CIT(A) also erred in failing to appreciate that refusal to condone delay has resulted in the meritorious matter under consideration being thrown out at the very threshold, thereby leading the cause of natural justice being defeated.*
- 3. That the Ld. CIT(A) also erred in failing to appreciate that the penalty proceedings are based on legally defective notice u/s 271 (i)(c) read with section 274/271 of I.T. Act dated 18-03-2016, in as much as it does not specify precisely under which limb of section 271 (i)(c) of I.T. Act, the penalty is proposed, thereby leading the entire penalty proceeding from A to Z null and void ab-initio.*
- 4. That even otherwise too, the Ld. CIT(A) erred in failing to appreciate that no satisfaction as per law has been recorded in impugned quantum assessment order dated 18-03-2016 leading to misapplication of judicial mind.*
- 5. That the Ld. CIT(A) also erred in failing to appreciate that without disposal of quantum appeal lying pending since 25-01-2018, the disposal of penalty appeal being contrary to process of law, is unsustainable/untenable ab-initio.*
- 6. That without prejudice to above, on merits too, the investment in*

purchase of property has been made from explained sources by way of various loan/house loan, thereby leading to non-concealment of particulars of income on the part of the appellant as per law.

7. *That without prejudice to above, since the impugned assessment order was passed in ex-parte manner and the penalty appeal too has been dismissed “in limine”, the appellant was prevented by sufficient cause from producing evidence both at assessment level as well as at appellate level, application for additional evidence will be filed at the time of hearing of appeal. “*

3. The representative of the assessee is present and filed adjournment application. By looking into the Grounds of Appeal and the material on record, we deem it fit to hear the Ld. DR and dispose the present Appeal.

4. The brief facts of the case are that, the assessee filed return of income declaring income at Rs. 3,88,845/-. The case was selected for scrutiny u/s 148 of the Act and the assessment proceedings have been initiated against the assessee and an assessment order came to be passed on 18/03/2016. The Ld. A.O found that the assessee has no plausible explanation to offer with regard to investment of Rs. 63,00,000/-. Thus, the addition has been made for investment of property of Rs. 63,00,000/- and assessed the total income of the assessee at Rs. 66,88,843/- as against the returned income of Rs. 3,88,845/-. Pursuant to the Assessment Order dated 18/03/2016, penalty proceedings have been initiated against the assessee and penalty order u/s 271(1)(c) of the Act has been passed vide order dated 30/09/2016.

5. As against the penalty order dated 30/09/2016, the assessee has preferred an appeal before the CIT(A). The Ld.CIT(A) vide order dated 29/11/2019, dismissed the Appeal filed by the assessee on the ground of delay in latch of “more than 12 months”.

6. Aggrieved by the order dated 29/11/2019 the present appeal has been preferred by the assessee. The specific ground of the assessee is that the CIT (A) has dismissed the Appeal of the assessee merely on the grounds of delay in filing the Appeal and non furnishing of the original notice of demand which led to miscarriage of natural justice.

7. On the other hand, the Ld. DR submitted that there is a delay of 12 months and the reason assigned was not satisfactory. Thus, the Ld. DR justified the order of the Ld.CIT(A).

8. We have heard the Ld. DR perused the material on record and gave our thoughtful consideration. As against the penalty order dated 30/09/2016, the assessee has preferred the Appeal before the CIT(A) with a delay of more than 12 months. It is the specific case of the assessee before the CIT(A) that the assessee has not received any notice u/s 271(1)(c) or the order passed u/s 271(1)(c) of the Act. The assessee came to know only after the recovery proceedings have been initiated by the Department. Further, it is the case of the assessee before Ld. CIT(A) that, the assessee has left the address of Rajinder Nagar, Ghaziabad. Therefore, the notice and the assessment order has not been served on the assessee, which ultimately passing the penalty order against the assessee.

9. On perusal of the record, it is found that the Ld.CIT(A) has dismissed the appeal on the ground of delay in latches and also for non production of the original demand notice, but it is the specific case of the assessee is that neither the notice nor the penalty order have been served on the assessee. The Ld. CIT(A) has not brought any material on record regarding of non service of the notice and the penalty order on time to contradict the claim of the assessee.

10. In our considered opinion, by considering the facts and circumstances of the case and for the reasons assigned by the assessee for condoning the delay, the Ld.CIT(A) ought to have condoned the delay should have decided the appeal on merits. Therefore, in the interest of justice, we inclined condone the delay in filing the appeal before the CIT(A) and further remand the matter to the file of Ld.CIT(A) with a direction to hear the assessee and dispose the Appeal on merit in accordance with law all the issue on merit are kept open. Further, the assessee is also directed to cooperate with the Appeal proceedings. Accordingly, Ground No. 1 & 2 of the assessee is allowed for statistical purposes. In view of allowing Ground No. 1 & 2 by remanding the matter to CIT(A) to decide on merit, other grounds requires no adjudication at our hands.

11. In the result, Appeal filed by the assessee is allowed for statistical purpose.

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

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER
Dated : 02/09/2022

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

**R.N* Sr. PS*

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

