

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

**BEFORE NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 8058 /DEL/2019
[Assessment Yr: 2014-15]**

KashyapSrivastava S/o Sh. PurshotamLalSrivastava, J-382, Sector 23, Sanjay Nagar, Ghaziabad-201001. PAN- BFXPS5276P	<u>Vs</u>	Income-tax Officer, Ward-1(3), Ghaziabad.
Appellant		Respondent

AND

**C.O. No. 3/Del/2020
[in ITA No. 8058 /DEL/2019]
[Assessment Yr: 2014-15]**

Income-tax Officer, Ward-1(3), Ghaziabad.	<u>Vs</u>	KashyapSrivastava S/o Sh. PurshotamLalSrivastava, J-382, Sector 23, Sanjay Nagar, Ghaziabad-201001. PAN- BFXPS5276P
Cross objector		Respondent

Assessee by	None
Department by	Shri Ravi Kant Choudhary Sr. DR
Date of hearing	01.09.2022
Date of pronouncement	01.09.2022

ORDER

PER N.K. CHOUDHRY, JM:

This appeal under consideration has been preferred by the Assessee/Appellant herein, whereas the Cross objection has been preferred by the Revenue/Department against the order dated 31.08.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-I, Noida (in short "Ld. Commissioner") under Section 250 of the income-tax Act, 1961 (in short "the Act") for the assessment year 2014-15.

2. Brief facts relevant for adjudication of the instant appeal are that in the instant case assessment order dated 23.11.2016 was passed by the Assessing Officer Ward 1(3), Ghaziabad u/s 144 of the Act, whereby the total income of the Appellant was determined at Rs. 82,00,625/-.

3. Against the said assessment order the Appellant preferred first appeal which was taken into consideration by the Ld. Commissioner. The Ld. Commissioner issued three notices to the Appellant at the address mentioned by the Appellant in Form No. 35. However, all the three notices have been returned back by the postal authority with the remarks that "on the given address there was no person called KashyapSrivastava". The Ld. Commissioner finding no other address and considering the peculiar facts that even the notices sent have been returned back, presumed the notices as served upon the Appellant in the facts of the case, and further held that requirement of service of notice in terms of the provisions of Section 282 of the Act read with applicable provisions of CPC 1908 stands complied with.

The Ld. Commissioner finally dismissed the appeal of the Appellant on the ground that the Appellant has brought no evidence on record that it has deposited the necessary fee in terms of the provisions of section 249(1)(a) of the Act to the credit of the Central Government. In the absence of return

of income, the appeal of the Appellant cannot be admitted because of mischief of Section 249(4)(b) of the Act. Even on merits, the Appellant has brought nothing on record to discharge the onus upon it that the impugned assessment order is bad in law.

4. The Appellant being aggrieved preferred the instant appeal against the impugned order, whereas the Revenue/Department has also preferred the cross-objection under consideration on the following grounds:

"1. Ld. CIT(A)-1, Noida has erred in law and on facts by deciding the appeal of the assessee without having jurisdiction over the case as the assessee in this case filed the appeal with the CIT(A)-1, Noida whereas the same should have been filed with and decided by the jurisdictional CIT(A), Ghaziabad. Therefore, order of Ld. CIT(A)-1, Noida is illegal, bad in law and in violation of CBDT's notification no. 66/2014 dated 13.11.2014 r.w. order no. G-03/2014-15 dated 15.11.2014 of Ld. Pr. CCIT(CCA), Kanpur, assigning jurisdiction to CIT(A), Ghaziabad and other CsIT(A) of UP(West & Uttrakhand). Although the tax effect in this case is below the stipulated limit, cross-objection is being filed because the case falls under exception clause 10(b) of Circular No. 3/2018 dated 11th July 2018 of the CBDT.

2. The Ld. CIT(A)-1, Noida has erred in law as well as on facts in not appreciating the fact that the appeal of the assessee should have been transferred to the jurisdictional CIT(A), Ghaziabad for adjudication

3. Therefore, the order dated 31.08.2018 of the CIT(A)-1, Noida, being a nullity in the eyes of law, may be set aside for fresh adjudication to the jurisdictional Ld. CIT(A), Ghaziabad.

4. The respondent craves leave to modify any of the grounds above and/or to add any fresh ground or grounds as and when it is required to do so."

5. Thought notice of hearing of instant appeal for 1.9.2022 was issued to the Appellant through speed post on 22.6.2022, however, the Appellant

neither appeared nor filed any adjournment application. Therefore, in the constrained circumstances, considering the issues involved in the case, we are deciding these matters ex parte.

6. The Revenue/Department challenged the impugned order on the ground that the assessment order has been passed by the Assessing Officer, Ghaziabad, therefore, the appeal should have been decided by the Ld. CIT(Appeals) Ghaziabad only as per CBDT's Notification no. 66/2014 dated 13.11.2014 read with order no. G-03/2014-15 dated 15.11.2014 issued by the Ld. Pr. CCIT(CCA), Kanpur, the jurisdiction was assigned to the CIT(A), Ghaziabad. Though in the case under consideration the tax effect was below the stipulated limit, however, the cross-objection was filed because the case falls under exception clause 10(b) of Circular No. 3/2018 dated 11th July 2018 of the CBDT. The Revenue/Department further claimed that the Ld. Commissioner has erred in law and on facts by deciding the appeal of the Appellant without having jurisdiction over the case and not appreciating the fact that the appeal of the Appellant should have been transferred to the jurisdictional CIT(A), Ghaziabad for adjudication. Therefore, the order impugned being a nullity in the eyes of law, may be set aside for fresh adjudication to the jurisdictional Ld. CIT(A), Ghaziabad.

7. At this stage, before going into the controversy whether Ld. Commissioner had jurisdiction to decide the appeal of the Appellant or not, we are inclined to decide the appeal of the Appellant, first.

8. At the outset we observe that there is also delay of 206 days in filing of the appeal by the Appellant. The Appellant by filling an application, sought condonation of delay on the ground that his mother Smt.

UshaSrivastavareceived the impugned order, however, forgot to tell the Appellant and his wife about this order and same was mis-placed during home shifting. On coming to know about receiving of the order, the Appellant immediately rushed to his Chartered Accountant for submission of appeal. Soon thereafter the Assessee got in touch with his consultant and filed the appeal on 4.10.2019. The Appellant in support of this contention also filed his affidavit executed on 4.10.2019. The Appellant also filed affidavit of his mother Smt. UshaSrivastava, who stated in the affidavit that she had been residing with her son from November 2015 to 23rd January, 2019 at Flat No. 18014 ATS Advantage, Ahinsa Khand-1, Indrapuram, Ghaziabad and on 11.1.2019 she received an envelope bearing the name of KashyapSrivastava and kept with her personal belongings. However, forgot to tell about it to the Appellant as it escaped from her mind till she was questioned about receiving of notice from Revenue/Department. Further, she mis-placed the same during the shifting of her belongings from "ATS Residential Complex" to 'Gaur Green Residential Complex" as she did not know the importance of this letter. On 26.9.2019 when she was inquired about receiving of any letter from Income-tax Department then she told the Appellant about the fact of receiving. That all this delay is on account of her ignorance.

9. We have given thoughtful consideration to the peculiar facts and circumstances and are not convinced with the reasoning given by the appellant for condonation of delay. However, considering the fact that the impugned order has been passed as ex parte and allegations have been made by the Revenue/Department with regard to the jurisdiction exercised by the Ld. Commissioner in disposing of the appeal, in our considered view the justice would be met by condoning the delay considering and remanding the case to the file of the Ld. CIT(A), Ghaziabad for decision afresh. Suffice

to say by affording reasonable opportunity of being heard to the Appellant. We also direct the Appellant to appear and cooperate with the proceedings and file the relevant documents as would be required by the Ld. Commissioner for proper and real adjudication of the appeal. Consequently, the case is remanded on the aforesaid terms.

9. In the result, appeal filed by the Appellant stands allowed for statistical purposes.

10. In view of decision in the Appellant's appeal i.e. ITA no. 8058/Del/2019, the cross-objection no. 3/Del/2022 filed by the Revenue/Department become infructuous.

Order pronounced in open court on 01.09.2022.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP