

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DLEHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 378/Del/2020  
Assessment Year: 2010-11**

Atul Kumar Tyagi,  
B-319, HIG, Nandgram,  
Ghaziabad.  
**PAN: ADCPT0310K**  
(Appellant)

VersuS Income-tax Officer,  
Ward 1(1), Ghaziabad.  
  
(Respondent)

Appellant by :None  
Respondent by : Sh. Kanav Bali, Ld. Sr. DR  
  
Date of hearing : 11.10.2022  
Date of order : 18.10.2022

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

This appeal has been preferred by the Assessee against the order dated 30.10.2019, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)- Ghaziabad (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2010-11.

**2.** In the instant case, the assessment order u/s. 147/143(3) of the Act was passed by the Assessing Officer on dated 26.12.2017 wherein, the additions of Rs.8,50,000/- and Rs.1,00,000/- were made on account of unexplained cash credits u/s. 68 of the Act.

**3.** The Assessee being aggrieved preferred first appeal before the Id. Commissioner. The Id. Commissioner on finding that there is a delay of more than two months in filing of the appeal on dated 12.04.2018 by the Assessee, issued notice for explaining the delay to the Assessee. In response, the Assessee replied that the assessment order was received on 29.12.2017, hence, the appeal has to be filed upto 28.01.2018. On 25.01.2018, the appellant met with an accident, as his motorcycle got slipped and his lower back was wounded. He was not able to move and on the doctor's advice he took complete rest upto 09.04.2018. On 10.04.2018, he asked us (counsel) to file the appeal, which was filed on 11.04.2018. Therefore, the appeal was filed late due to unavoidable circumstances. There is no negligence on the part of the Assessee for non-filing of appeal as it has happened due to above unavoidable circumstances. Medical Certificate and prescription is enclosed.

**3.1** The Id. Commissioner by considering the said contentions of the Assessee, observed that the request for condonation of delay duly signed by the appellant does not suggest who is

requesting for condonation of delay. The photocopies of medical certificate, that too un-authenticated, submitted for not preferring the appeal after 25.01.2018 cannot be accepted. It is felt that the appellant has not acted with reasonable diligence in prosecuting the appeal. Thus, there is unjustifiable delay in filing the appeal. Condonation of delay is not a matter of right, since appellant has failed to show reasons of delay on last day of limitation and thereafter for each day. The Id. Commissioner ultimately while relying upon the judgment passed by the coordinate Bench of the Tribunal in the case of JCIT vs. Tractors Farm Equipments Ltd. (ITA Chennai-TM), 104 ITD 149, decision of Hon'ble Supreme Court in the case of Ronkak&Ors. Vs. Rewa Coalfields Ltd. AIR 1962 SC 361 and Madras High Court in the case of MadhuDadha vs. ACIT, 31 ITR 458, dismissed the appeal of the Assessee in limine by holding the same as non-est being defective. Aggrieved by the impugned order, the assessee is in appeal before us.

**4.** Despite issuing notice of hearing to the Assessee at the address given in form No. 36, the Assessee neither appeared nor filed any application for adjournment. Therefore, in the constrained circumstances, we are inclined to decide this appeal as ex parte on the basis of material available on record and after hearing the Id. DR.

**5.** Heard the Id. DR who supported the impugned order by submitting that the impugned order passed by the Id. Commissioner does not call for any interference. We have also given thoughtful consideration to the contention of the Id. AR raised before the Ld. Commissioner and have also gone through the orders passed by the authorities below. In support of condonation of delay in filing first appeal and the fact that the Assessee met with an accident, a medical certificate was also submitted before the Id. Commissioner, which has not been termed as a fake certificate. Therefore, there being no good reason to disbelieve the unavoidable circumstances/accident/medical cause which in our considered opinion prima facie seems to be sufficient cause as also not rebutted by the Department, which prevented the Assessee to file the first appeal within the period of limitation, hence the Assessee cannot be debarred from his right to put up its case on merits. Consequently in our considered opinion dismissal of appeal at the very threshold as barred by limitation is not justified in the peculiar facts and circumstances of this case. Even otherwise no prejudice shall be caused to the Revenue Department in case the appeal of the Assessee is to be decided on merits.

Accordingly, by adopting pragmatic approach, the delay occurred in filing the first appeal is condoned and the matter is remitted back to the file of the Id. Commissioner for deciding the appeal of the Assessee on merits, after giving reasonable opportunity of being heard to the Assessee.

6. In the result, the appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in the open court on 18/10/2022

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-