

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1562&1563/Del/2022
Assessment Year: 2016-17

Amit Gupta 4A, Pocket D, Ashok Vihar, New Delhi-110052 PAN No.AETPG1215M (APPELLANT)	Vs	ACIT Circle Intl. Tax 1 (3) (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Pranshu Singhal, Advocate
Respondent by	Sh. Sanjay Kumar, Sr DR

Date of hearing:	09/02/2023
Date of Pronouncement:	09/02/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.1562/Del/2022 is the appeal by the assessee preferred against the order of the CIT(A)-42, New Delhi dated 27.04.2022 pertaining to A.Y.2016-17.

2. With this appeal the assessee has challenged the correctness of the assessment order dated 09.12.2018 framed u/s. 143 (3) of the Act.

3. ITA No.1563/Del/2022 is the appeal by the assessee is preferred against the order of the CIT(A)-42, New Delhi dated 20.06.2022 pertaining to A.Y.2016-17 and with this appeal the assessee has challenged the correctness of the order dated 08.06.2019 by which the AO levied penalty u/s. 271 (1) (c) of the Act.

4. At the very outset the Counsel for the assessee stated that the appeal before the first appellate authority could not be attended because of illness of the assessee because of which the appeal before the CIT(A) was also filed belatedly.

5. It is the say of the Counsel that before the CIT(A) the assessee could not present the cause for the delay in filing the appeal and the first appellate authority has dismissed the appeal as barred by limitation. The Counsel pleaded for the restoration of appeal so that the assessee can defend his case. Though the DR strongly objected to this by stating that the assessee was given sufficient opportunity to defend his case by the lower authorities, therefore, no second innings need to be given.

6. We have carefully perused the orders of the authorities below. A perusal of the assessment order shows that the assessee has not furnished the relevant documentary evidences in support of his claim of treaty benefit. The appeal before the CIT(A) was filed belatedly and the proceedings were not attended properly.

7. We are of the considered view that technicalities should not come in the way in parting justice, therefore, in the interest of justice and fair play we deem it fit to restore both the appeals to the files of the CIT(A). The CIT(A) is directed to consider the cause of delay in filing the appeal sympathetically and decide the appeal afresh on merits after giving a reasonable and adequate opportunity of being heard to the assessee. The CIT(A) is further directed to decide the issue relating to the levy of penalty u/s. 271 (1)(c) of the Act after deciding the quantum appeal.

8. In the result, both the appeal are treated as allowed for statistical purpose.

9. Decision announced in the open court on 09.02.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: .02.2023

Neha

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi