

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.392/DEL/2023
Assessment Year 2009-10

Rajpal, S/o Shri Mevaram, House No.35, Ibrahimpur, Junedpur Maujpur, Khurja Junction, Distt. Bulandshahr.	v.	The Income Tax Officer, Ward-2(3)(1), Bulandshahr.
TAN/PAN: CWPPR7506D		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Om Parkash, Sr.DR		
Date of hearing:	27	04	2023
Date of pronouncement:	27	04	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), Ghaziabad ('CIT(A)' in short) dated 31.08.2019 arising from the assessment order dated 28.10.2016 passed by the Assessing Officer (AO) under Section 144 r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. The grounds of appeal raised by the assessee read as under:

"1. That the Ld. CIT(A) has erred in dismissing the appeal and in holding that the original assessment order along with demand notice was duly served on the appellant on 31.10.2016 and there was no sufficient reason for excusing the delay in filing of the said appeal, while Ld. A.O. had issued the certified copies of the assessment order along with demand notice on 12.04.2018 due to

the non-receipt of original of the same by the appellant vide the Reply filed with the Ld. A.O. on 22.03.2018.

2. *That the Ld. CIT(A) has erred in 16,87,578/- holding that the appeal is defective as no payment as per provisions of section 249(4) has been made by the appellant.*

3. *For these and other grounds, which may be urged at the time of the hearing, the appeal may be allowed and justice rendered.”*

3. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter was proceeded *ex-parte*.

4. On perusal of the order of the CIT(A), it is noticed that the appeal has been dismissed *in limine* on two grounds.

(a) no payment of taxes as per provisions of Section 249(4) has been made by the assessee.

(b) the appeal has been filed belatedly by nearly 16 months for which explanation has not been furnished.

5. The CIT(A) thus concluded that appeal preferred by the assessee is treated as *non-est* being defective and consequently the appeal was dismissed *in limine* without dealing with the merits of the additions/disallowances in question. The relevant operative paragraph of the order of the CIT(A) is reproduced hereunder:

“2.1 Examination of facts reveals that the notice of demand was served on 31.10.2016 and the appeal was e-filed on 24.04.2018 which is delayed by 16 months. Moreover, examination of Form 35 reveals that appellant's appeal is defective as no payment as per provisions of section 249(4) has been made by the appellant and the appeal is stated to be out of time. 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, it is felt that appellant has not acted with reasonable diligence in prosecuting

the appeal. Reliance in this regard is placed on decision in the case of Rankak & Ors, Vs Rewa Coalfields Ltd. AIR 1962 SC 361, JCIT vs Tractors & Farm Equipments Ltd. (ITAT, Chennai-TM) 104 ITD 149, Madhu Dadha vs ACIT (Mad) 317 IT 458. Considering above facts and circumstances this appeal preferred by the appellant is treated as non-est being defective.”

6. On perusal of the short order of the CIT(A), it is not known whether any effective opportunity was given to the assessee before dismissal of the appeal *in limine*. There is no reference towards non compliance of any notice before the CIT(A). The income of Rs.39,11,308/- has been assessed against the sale consideration of immovable property of Rs.28,50,000/- as per AIR information. The Assessing Officer has estimated the cost of acquisition of the property and framed the assessment under Section 144 of the Act. The Assessee as per, statement of facts, has sold agricultural land which is claimed to be exempted under Section 2(14) of the Act and on the ground that such agricultural land is not a capital asset.

7. The assessee being agriculturist and uneducated villager residing in Village-Abrahimpur claimed to be not knowing anything about the income tax proceedings. The counsel of the assessee kept the assessee in dark on the proceedings and therefore, the assessee claimed to have sufficient cause for not presenting the appeal before the authorities. The assessee has not filed return of income at all and therefore the case for payment of taxes would fall under Section 249(4)(b) of the Act which obliges the assessee to pay the advance tax on the likely taxable income. If the plea of the assessee is accepted that the subject matter of land in sale is not a capital asset, then possibly no tax liability would arise at all and therefore, there would be

no infringement of Section 249(4) of the Act as alleged. Moreover, the CIT(A) being silent on the opportunity to the assessee in the first appellate proceedings, we consider it expedient to restore the matter back to the file of the CIT(A). The CIT(A) shall give proper opportunity to the assessee to explain the alleged default under Section 249(4) if any, and also towards belated filing of appeal. The CIT(A) shall keep in mind the watershed principles laid down in *Collector, Land Acquisition vs. Mst. Katiji, (1987) 2 SCC 107* while examining the issue of condonation of delay in filing the appeal. The CIT(A) shall readjudicate all issues in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/04/2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /04/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**