

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.1403/Del/2021
Assessment Year: 2017-18

Dominic Savio Dasilva, USA, 2488, Willow Glen, Dr. Colorado Springs Co. USA	Vs.	CIT, Circle- Intl. Taxation 1(2)(2) Delhi
PAN :AQXPD0318B		
(Appellant)		(Respondent)

Appellant by	Sh. Vikas Jain, Advocate
Respondent by	Sh. Virendra Singh, Sr. DR

Date of hearing	16.05.2023
Date of pronouncement	30.05.2023

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against order dated 10.05.2021 of learned Commissioner of Income Tax (Appeals)-42, Delhi, for the assessment year 2017-18.

2. The basic grievance of the assessee in the present appeal is against *ex parte* disposal of the appeal by learned first appellate authority, that too, *in limine* without condoning the delay.

3. Briefly the facts are, the assessee is a non-resident Indian staying in United States of America (USA). As could be seen from

the materials on record, the assessee owns a property in Goa, wherefrom, he earns rental income. In course of assessment proceeding for the impugned assessment year, the Assessing Officer noticed that during the demonetization period the assessee had deposited cash in his bank account. Therefore, he called upon the assessee to explain the source of such cash deposits. In response, the assessee submitted that the cash deposits were made out of the earlier withdrawals. The Assessing Officer, however, did not find merit in the submissions of the assessee and completed the assessment by adding back the cash deposits of Rs.13,43,000/- to the income of the assessee under section 69A of the Income-tax Act, 1961 (for short 'the Act'). Against the assessment order so passed, assessee preferred an appeal before the learned Commissioner (Appeals) with a delay of 379 days. Explaining the delay in filing the appeal, the assessee submitted that the chartered accountant, who was looking after the income tax related matters of the assessee, had given his address for communication of notices etc. He submitted, because of that, notices were communicated to the concerned chartered accountant. He submitted, though, the concerned chartered accountant, initially, complied with the notices, however,

subsequently, he did not do so. Therefore, there was delay in filing the appeal. The aforesaid submission of the assessee did not find favour with learned Commissioner (Appeals), who proceeded to dismiss assessee's appeal in limine without condoning the delay.

4. We have heard the parties and perused the materials on record. Before us, it is the say of the assessee that without affording reasonable opportunity of being heard to the assessee, the first appellate authority has dismissed the appeal by an *ex parte* order, that too, without condoning the delay. Therefore, learned counsel made a submission for setting aside the impugned order of learned Commissioner (Appeals) with a direction to decide the appeal on merits.

5. The learned Departmental Representative submitted, the matter can be restored back to the first appellate authority to decide the appeal after granting opportunity of being heard to the assessee.

6. Having considered rival submission, we find that there was delay in filing the appeal before the first appellate authority. The assessee had filed application seeking condonation of delay by stating that the concerned chartered accountant, who was

entrusted to look after the appeal, did not comply with the notices. Considering the fact that the assessee is a non-resident, the aforesaid explanation certainly appears plausible. In any case of the matter, the impugned order of learned Commissioner (Appeals) does not reveal whether any reasonable opportunity of being heard was granted to the assessee before dismissing the appeal. Thus, in our view, there is gross violation of Rules of Natural Justice.

7. In view of the aforesaid, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to him for *de novo* adjudication after providing due and reasonable opportunity of being heard to the assessee. We expect the learned Commissioner (Appeals) would not be too hyper-technical while dealing with the issue of condonation of delay and must make all endeavour to decide the appeal on merits. Grounds are allowed for statistical purposes.

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

Order pronounced in the open court on 30th May, 2023

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 30th May, 2023.
RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi