

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 3737/DEL/2023 [A.Y. 2017-18]

Shri Nirmal Doshi
C - 222, Greater Kailash
New Delhi

Vs.

The Income-tax Officer
Ward - 44(6)
New Delhi

PAN - AAGPD 5627 C

(Applicant)

(Respondent)

Assessee By : Shri Anil Kumar Gupta, CA

Department By : Ms. Kamaljot Kaur, Sr. DR

Date of Hearing : 16.04.2024

Date of Pronouncement : 16.04.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 31.10.2023 pertaining to A.Y. 2017-18.

2. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

3. The sum and substance of the grievance of the assessee is that the NFAC has grossly erred in deciding the appeal ex-parte by rejecting the assessee's plea for condonation of delay in filing the first appeal without affording any opportunity of being heard.

4. Briefly stated, the facts of the case are that the assessee is an individual and has filed his return of income on 09.10.2017 declaring total income of Rs. 5,86,380/-. The assessee sold shares of Indusind Bank Ltd periodically during the year but the sale consideration has not been offered as LTCG for taxation. Instead, the assessee has reported the same as exempt long term capital gain of Rs. 56,56,871/- in the return of income.

5. Subsequently, the Assessing Officer passed order u/s148A(d) of the Act on 23.07.2022 and reopened assessment proceedings by issuing notice u/s 148 of the Act. In response, the assessee filed his return of income declaring the same income.

6. Thereafter, despite several opportunities given to the assessee by issuing various notices/letters, the assessee did not respond to any of the notices. Details of opportunities given by the Assessing Officer to the assessee are furnished at Pages 2 and 3 of the assessment order. Therefore, the Assessing Officer proceeded to decide the appeal exparte u/s 143(3) r.ws. 144/144B of the Income tax Act. The Assessing Officer held that the Long Term Capital gain on sale of shares of Indusind Bank was fictitious and added the amount of Rs 58,42,670/- so received as unexplained money under section 69A. The Assessing Officer also added Rs 1,16,853/- as commission paid to avail the fictitious exempt LTCG. Thus the total income was assessed at Rs. 65,45,903/-.

7. Aggrieved, the assessee went in appeal before the Id. CIT(A).

8. The Id. CIT(A), at the very outset, observed that the appeal was late by 95 days and finding no plausible reason for the delay, rejected the application for condonation of delay of 95 days and dismissed the appeal accordingly.

9. Before us, the Id. counsel for the assessee vehemently argued that due to unprecedented COVID -19, the notices were not properly served upon the assessee. The Id. counsel for the assessee relied upon various judicial decisions.

8. Per contra, the Id. DR fairly conceded that the orders of the Id. CIT(A) are ex- parte.

9. Having heard the rival submissions, we are of the considered view that the assessee being a super senior citizen and having no access to his ITD Portal to get knowledge of notices issued by the Revenue authorities, was prevented by sufficient cause in attending the assessment proceedings, which resulted in ex-parte order by the first appellate authority. Therefore, in the interest of

justice and fair play, we deem it fit to restore the appeal to the file of the ld. CIT(A).

10. The ld. CIT(A) is directed to decide the appeal afresh after affording a reasonable and adequate opportunity of being heard to the assessee keeping in mind the age of the assessee and his inability to access his ITD Portal.

11. The assessee is also directed to provide necessary information/documents as required by the authorities.

12. In the result, the appeal of the assessee in ITA No. 3737/DEL/2023 is allowed for statistical purposes.

The order is pronounced in the open court on 16.04.2024.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 16th APRIL, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	