

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &  
Dr.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.1238/Del/2023**

**[Assessment Year : 2011-12]**

Avnish Kumar Suraj Kumar Jain, C-6/1., Rana Pratap Bagh, New Delhi-110007. <b>PAN-AEKPJ2063C</b>	vs	ITO, Ward-36(5), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	None	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	15.04.2024	
<b>Date of Pronouncement</b>	28.06.2024	

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee is directed against the order passed by Ld.CIT(A), New Delhi dated 27.11.2019 for the assessment year 2011-12. The assessee has raised following grounds of appeal:-

1. *“That the ex-parte assessment order dated 27-11-2019 passed by the Ld. CIT (Appeal), New Delhi is against the law and facts of the case.*
2. *That the Ld. CIT (Appeal), New Delhi has not afforded the proper and sufficient opportunity to the appellant to plead and represent his case and to file the relevant papers and documents in connection with the assessment proceedings. The appellant filed the ITR pertaining to the AY 2011-2012 in response to notice u/s 148 of the IT Act, 1961.*
3. *That the appellant could not file the return in time due to the reason that the whole record was lying with the accountant of the firm, who has shifted his office from Delhi to Manesar, Haryana and due to his mistake the return could not be filed in time and later on*

*the return has been filed in response to notice u/s 148 of the I.T. Act, 1961. The appellant is not maintaining the regular books of account, hence the return filed u/s 44AD of the IT Act, 1961 and due tax thereon along with the interest has been deposited and this fact has completed by ignored by the Ld. ITO as well as by the Ld. CIT (Appeal), New Delhi while dismissing the appeal.*

4. *That the appellant is very much cooperative with the department and has not committed any default in any manner deliberately or intentionally and this fact is very much clear from the records of the appellant.*
5. *That the Ld. CIT (Appeal), New Delhi has erred in law in not following the rules and principles of the natural justice before framing dismissing the appeal of the appellant pertaining to the assessment year 2011-2012. The rules and principles of natural justice requires that no one shall be condemned unheard and in the case of the appellant no such efforts have been made by the Ld. CIT (Appeal), New Delhi before dismissing the appeal to file the relevant papers and information in connection with the assessment proceedings.*
6. *That as per the assessment order the appellant has deposited cash amounting to Rs. 25,89,000/- in the bank account and the same has been treated as the income of the appellant and accordingly has calculated the tax on the whole cash deposited in the bank. In this connection it is submitted that practically it is not possible that the whole cash receipts is the income of the appellant as this amount has been mentioned in the assessment order reflects the sale proceeds of the appellant and not the income of the appellant.*
7. *That the appellant reserves the right to add, amend and delete any of the grounds of appeal either at the time of hearing or before hearing of this appeal.”*

2. Neither any one has attended the proceedings nor any application seeking adjournment has been filed on behalf of the assessee. Under these facts, the appeal was taken up for hearing in the absence of the assessee and is being decided on the basis of material available on records.

3. The present appeal is barred by time. There is a delay of 1170 day in filing the appeal. The assessee has filed application seeking condonation of delay. The reason for filing the present appeal late is stated to be worldwide spread of Covid-19 pandemic and shifting of business by the assessee from Delhi to outside Delhi. Further, all borders and Railways tracks were blocked due to Kisan Andolan by the agitating farmers. Hence, it is submitted that there is reasonable cause for not filing the present appeal within prescribed time.

4. Ld. Sr.DR for the Revenue has objection in this regard.

5. We have heard Ld. Sr. DR for the Revenue and perused the material available on record. In the affidavit filed by the assessee in support of application seeking condonation of delay, the contents of application are reproduced herein under:-

*Respected Sir,*

*"It is respectfully submitted as under:*

1. *That the appellant has filed an appeal before the Ld. CIT(Appeal), New Delhi against the order of the Ld. ITO, Ward No. 36(5), New Delhi. The Ld. ITO has framed the ex-parte assessment order u/s 144/147 of the Income Tax Act, 1961 due to non-appearance on the part of the appellant. In this connection it is submitted that there is no proper and effective service of the notice issued by the Deptt.*

2. *That the appellant has filed an appeal before the Ld, CIT Appeal, New Delhi, the appeal has been dismissed by the Ld. CIT (Appeal, New Delhi. But the condonation of delay in filing the appeal has been accepted.*
3. *That there is a delay in filing the appeal before the Hon'ble Income Tax Appellate Tribunal due to the reason that the appellant has shifted the business premises as well as residence from Delhi to Haryana. The second reasonable cause for not filing an appeal before Hon'ble ITAT is the Covid- 19. The third reason for delay in filing the appeal before the Hon'ble Court is the Kisaan Andholan, they have blocked all the roads and the Highway was completely closed down by the Kisaan Andholan. These are the reasonable cause for late filing of the appeal before the Hon'ble ITAT.*
4. *That the Ld. CIT(Appeal) has not considered the Income Tax Return filed by the appellant and the same is available on the record of the Deptt. moreover, the Ld. CIT has dismissed the appeal of the appellant without considering the records available with the Deptt. specially the bank statement, computation of income and the ITR filed before the Ld. ITO.*
5. *That there is no malafide intention on the part of the appellant for filing the appeal late before the ITAT. It is beyond the control of the appellant to file the appeal late as there was a reasonable cause as mentioned above.*

**PRAYER:**

*It is, therefore, most respectfully prayed that this application may kindly be allowed and the delay of days in filing the appeal may kindly be condoned and the matter may kindly be heard on its merit in the interest of justice.”*

6. The delay in this appeal is 1170 days. The impugned order was passed on 27.11.2019, the appeal had been filed on 27.04.2023 after elapse of more than three years. The cause for delay is stated to be Covid-19 pandemic and

roads and highways were closed down by the farmers. It is noticed from the records that there was no representation by the assessee before lower authorities. Both assessment order and appellate order was decided *ex-parte* to the assessee. The cause for non-appearance before the lower authorities is stated to be non-receipt of statutory notices. It is stated that the assessee had shifted his residence from Delhi to Sonapat, Haryana. It is also stated that the person who used to look after the accounts, failed to file Income Tax Return and did not apprise the assessee about the developments. It is stated by the assessee that later on, he contacted another counsel and through him, he filed the present appeal. At this stage, we are concerned with the cause for filing the appeal belatedly. There is inordinate delay in filing the present appeal. The impugned order was passed on 27.11.2019. The present appeal should have been filed within sixty days of the date on which order sought to be appealed against is communicated to the assessee. However, there is inordinate delay for filing the present appeal. The law is well-settled that if the litigant is prevented by sufficient cause for not approaching the Court within the time as prescribed under law, the Tribunal/Court would be justified in condoning the delay. Looking to the explanation offered by the assessee, we are of the considered view that there was reasonable cause that prevented the assessee in filing the present appeal. Undisputedly, in recent part country has witnessed unprecedented events of Covid-19 and thereafter, farmer's agitation. Under these facts, taking a liberal approach as mandated by Hon'ble Supreme Court in catena of judgement, we hereby condone the delay and admit the appeal for deciding it on merit.

7. **Ground Nos.1 and 7** are general in nature, need no separate adjudication, hence dismissed.

8. **Ground Nos. 2 to 5** raised by the assessee are against not providing adequate opportunity.

9. Apropos these grounds, Ld. Counsel for the assessee contended that the authorities below grossly failed to afford sufficient opportunity to the assessee.

10. Ld. Sr. DR for the Revenue opposed these grounds raised by the assessee and submitted that the assessee has been thoroughly negligent. He did not attend the proceedings before the lower authorities and failed to furnish the supporting evidences. Therefore, in the absence of supporting evidences, lower authorities were justified in making additions u/s 68 of the Act, as the unexplained cash was found credited in the accounts of the assessee.

11. In re-joinder, Ld. Counsel for the assessee contended that the AO has added entire cash deposits without making independent inquiry which caused serious prejudice to the assessee.

12. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. From the records, it is transpired that there was no effective representation by the assessee before the authorities below. The assessment order has been passed *ex-parte* to the assessee. The AO made impugned additions by observing as under:-

2. *“Bearing no compliance has been shown towards the statutory notices issued and the non-cooperation shown by the assessee towards the assessment proceedings, I shall be compelled to dispose of the assessment proceedings on the basis of material available on the record and also on the basis of my best judgment.*

*"It is well-settled that in a best judgment assessment there is always a certain degree of guess work. No doubt the authorities concerned should try to make an honest and fair estimate of the income even in a best judgment assessment, and should not act totally arbitrarily, but there is necessarily some amount of guess work involved in a best judgment assessment, and it is the assessee himself who is to blame as he did not submit proper accounts."*

3. *Since there was no response from the assessee, it was presumed that the assessee has nothing to say.*
4. *Keeping in view the above facts, an addition of Rs. 25,89,000/- as undisclosed cash under section 68 is accordingly made to the taxable income of the assessee. Further, I am satisfied that the assessee has concealed his income to this extent, hence, penalty proceedings under section 271(1)(c) of Income Tax Act, 1961 is being initiated separately.*

*(Addition of Rs. 25,89,000/-)*

5. *Again since the assessee has not submitted her ITR under section 139(1) of Income Tax Act, 1961 for the assessment year under consideration in spite of the fact that she had taxable income more than taxable limit during the assessment year under consideration, penalty proceedings, under section 271F are being initiated for non-furnishing of ITR for A.Y. 2011-12.*
6. *With this remark, assessed income of the assessee is computed as under:-*

<i>Addition as per Para 4 above</i>	<i>Rs. 25,89,000/-</i>
<i>Total</i>	<i>Rs. 25,89,000/-</i>
<i>Total (Rounded off)</i>	<i>Rs. 25,89,000/-</i>

7. *Keeping in view the above facts, Income of the assessee is assessed at Rs. 25,89,000/-. Give credits of prepaid taxes as appearing in 26AS. Issue necessary forms. Charge interest u/s 234A/B/C if applicable under Income Tax Act, 1961. Penalty proceedings u/s 271(1)(c) & 271F of Income Tax Act, 1961 are being initiated separately.”*

13. From the above, it is evident that AO did not make any inquiry and made additions in a mechanical manner. It is well-settled that section 144 of the Act casts an obligation on the Assessing Authority for making necessary inquiry qua the nature of transaction before proceedings for making disallowances/additions. The Ld.CIT(A) sustained the findings of AO, treating the Income Tax Return of the assessee as invalid without assigning any reason. Therefore, to sub-serve the principle of natural justice, we hereby, set aside the impugned order and restore the assessment to the AO for making assessment afresh after providing adequate opportunity of being heard. Ground Nos. 2 to 5 raised by the assessee are accordingly, allowed for statistical purposes.

14. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 28<sup>th</sup> June, 2024.

**Sd/-**

**Sd/-**

**(Dr.B.R.R.KUMAR)**  
**ACCOUNTANT MEMBER**

**(KUL BHARAT)**  
**JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI