

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

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.2613/Del/2024
(ASSESSMENT YEAR-2012-13)

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| Ram Niwas Gupta (Through Legal Heir Som Lata Gupta) 159, Katra Baryan Fatehpuri, Delhi-110006 PAN:AHQPG8014M (Appellant) | Vs. | Asst.CIT Delhi (Respondent) |
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| Assessee by | Shri Deepanshu Singla, Adv. |
| Respondent by | Shri M.P. Dwivedi, Sr. DR |

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| Date of Hearing | 01/08/2024 |
| Date of Pronouncement | 09/10/2024 |

ORDER

PER VIMAL KUMAR, JM:

1. The appeal of the Assessee is against order dated 25/02/2023 of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of Assessment Order dated 26/12/2019 of Learned Assistant Commissioner of Income Tax, Circle-46(1), New Delhi [hereinafter referred to as "Ld. AO"] for the Assessment Year 2012-13.

2. Brief facts are that assessee filed return of income on 20/08/2012 declaring total income of Rs.2,47,920/-. The return was processed u/s 143(1) of the Income Tax Act ('the Act' for short). Ld. AO issued notice u/s 148 dated 31/03/2019. The notice was not accompanied by copy of reasons recorded for issue of notice u/s 148 of the Act. In response to same assessee filed return of income on 26/08/2019. Notice u/s 143(2) was issued on 21/10/2019. Ld. AO passed assessment order u/s 143(3) r.w.s 147 of the Act on 26/12/2019 making addition of Rs.5,00,000/- u/s 68 of the IT Act.

3. Assessee preferred appeal before Ld. CIT(A) which was dismissed vide order dated 25/02/2023.

4. Being aggrieved, appellant assessee preferred appeal with following grounds:-

"1. That under the facts and circumstances of the case, the impugned order dated 25.02.2023 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), generated vide DIN: ITBA/NFAC/S/250/2022- 23/1050129219(1), dismissing the grounds of appeal and sustaining the total income at Rs. 7,47,920/- in place of returned income as returned by the assessee is bad in law on account of several grounds and assessee/appellant denies its liability to be assessed for any income other than the income already returned by the assessee and the consequential demand of Rs. 1,45,740/-.

2. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while passing the impugned order as the Ld. CIT(A), has dismissed the appeal on account of non-appearance during the appeal proceedings, but it is imperative to note that the absence of the appellant was not deliberate or intentional but due to the reason that the appellant was demised in the month of November 2020.

3. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while passing the impugned order as the Ld. CIT(A) has upheld the addition made by the Ld. AO in the assessment order dt. 26.12.2019 passed without following due procedures of law and without having proper jurisdiction.

4. That under the facts and circumstances of the case the Ld. CIT(A) has erred in law as much as in fact while passing the impugned order as the Ld. CIT(A) has upheld the addition made by the Ld. AO on account of alleged bogus sales made, without appreciating the fact that the appellant has already taken his complete sales into account while filing the income tax return.

5. That appellant craves to leave, alter, amend or modify the grounds of appeal before or during the hearing of the appeal.

6. That each ground is independent and without prejudice to each other.”

5. Learned Authorized Representative of the assessee submitted that there is delay of 393 days in filing appeal due to lack of knowledge of proceedings of appeal as assessee died on 01/11/2020, during pandemic covid 19. Smt. Somlata Gupta in capacity of legal heir appointed vide survivor certificate dated 05/01/2024 issued by District Magistrate, Vivek Vihar, Delhi has preferred the appeal. Learned CIT(A) erred in dismissing the appeal due to non-prosecution in violation of principle of natural justice. The matter may be remitted back to Learned CIT(A).

6. Learned Authorized Representative for Revenue submitted that due to non appearance of appellant, the appeal was dismissed.

7. From appraisal of record, it is amply clear that there is delay of 393 days in filing the appeal due to lack of knowledge of proceedings of appeal and due to death of assessee. The explanation does not smack of malafides as Legal Representative of assessee has not gain anything by not filing appeal within period of limitation. So the delay in filing the appeal is condoned.

8. From examination on record, it is crystal clear that Learned CIT(A) decided appeal in absence of appellant as no response to notice for hearing during the appeal was filed. It is a fact that assessee died on 01/11/2020. In view of above material facts and well settled principle of natural justice passing of impugned order has led to miscarriage of justice which is required to be remedied.

9. Hence the appeal of the assessee is allowed for statistical purposes. The matter is restored to the file of Learned CIT(A) for passing a fresh order as in accordance with law.

Order pronounced on this day 9th October, 2024.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-

(VIMAL KUMAR)

JUDICIAL MEMBER

Dated: 09/10/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI