

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' : NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT

ITA Nos.4436 & 4437/Del/2024  
Assessment Year : 2016-17

Shri Ramesh Khanna,  
480, Katra Ishwar Bhawan,  
Khari Baoli,  
New Delhi – 110 006.  
PAN : AASPK0719Q.  
(Appellant)

Vs. Income Tax Officer,  
Ward-47(2),  
Delhi.

(Respondent)

Appellant by : Shri Shivam Garg, Advocate.  
Respondent by : Shri Sanjay Kumar, Senior DR.

Date of hearing : 17.02.2025  
Date of pronouncement : 17.02.2025

ORDER

PER MAHAVIR SINGH, VP

These two appeals by the assessee are arising out of two different orders of learned CIT(A), NFAC, Delhi, orders dated 25<sup>th</sup> July, 2024.

2. The appeal in ITA No.4436/Del/2024 is as regards to quantum addition and assessment was framed by ITO, Ward-47(2), New Delhi for the assessment year 2016-17 under Section 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), order dated 15<sup>th</sup> December, 2018.

3. As regards ITA No.4437/Del/2024 is against penalty order passed by the ITO, Ward-47(2), New Delhi under Section 271(1)(c) read with Section 274 of the Act vide order dated 28<sup>th</sup> June, 2019.

4. The only common issue in these two appeals of the assessee is as regards the first adjudicating issue of limitation and dismissing both the appeals in-limine. Secondly, the Assessing Officer, without admitting and dismissing the appeals as unadmitted, adjudicated the issue on merits also without providing reasonable opportunity of being heard to the assessee. At the outset, learned Counsel for the assessee took me through the assessment order and stated that the assessment order is dated 15<sup>th</sup> December, 2018. But it was received by the assessee on 10<sup>th</sup> June, 2019 and this fact is noted by the learned CIT(A) in his appellate order as under :-

*“On perusal of the record, it is seen that while filing Form 35, the appellant has submitted copy of assessment order passed by the AO on 15.12.2018. On perusal of the same it is seen that something is written on it and the date is 10.06.2019. The relevant extract of the same is as below:-“*

5. I noted that when this fact was confronted to the learned Senior DR, he could not controvert the above fact situation and admitted that there is no delay in filing of the appeal before the learned CIT(A). As regards ITA No.4437/Del/2024, similar is the position that the learned CIT(A) dismissed the appeal without providing reasonable opportunity of being heard and deciding ex-parte simplicitor for non-prosecution. I noted that in this appeal also, there is no delay and learned CIT(A) wrongly dismissed it as infructuous and unadmitted.

6. After considering the facts in the entirety, I am of the firm opinion that this appeal before the learned CIT(A) was filed in time by the assessee and learned CIT(A), despite looking into the facts, has grossly done injustice to the assessee. In that eventuality, I set aside the order of learned CIT(A) and remand the matter to his file for fresh adjudication. Registry is directed to send a copy of this order to the

Chairman, CBDT for perusal and action at his end. Both the orders of learned CIT(A) are set aside and matter remanded to his file.

7. In the result, both the appeals are allowed for statistical purposes.

Decision pronounced in the open Court on conclusion of hearing on 17<sup>th</sup> February, 2025.

Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT

VK.

Copy forwarded to: -

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

Assistant Registrar