

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA
BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No. 23/Agra/2019
(ASSESSMENT YEAR-2010-11)**

Shri Jay Singh S/o Shri Ram Dayal, Village Maharajpur, Post Khaneta, Tehsil Jaura, Distt Morena. PAN:CFWPS1529H (Appellant)	Vs..	Income Tax Officer, Ward-2(2)(3), Firozabad. (Respondent)
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Appellant by	Shri Rajendra Sharma, Adv.
Respondent by	Smt. Sita Srivastava, DR.

Date of Hearing	24.08.2021
Date of Pronouncement	20.09.2021

ORDER

Per, Dr. M.L. Meena, A.M.:

This appeal is filed by the assessee against the order passed by the Id. CIT(A) dated, 30.11.2018 for A.Y. 2010-11.

- “1. On the fact and in circumstances of the case learned CIT (A) was not justified in holding that proceedings U/S 147 (A) by issue of notice U/S 148 were valid.*
- 2. The learned CIT (A) was not justified in not condoning the short delay caused due to serious illness in filing the appeal by*

the assessee who otherwise comes of from an interior village of Morena Dist.

3. The learned CIT (A) was not justified in not entertaining the additional evidence in explaining the source of deposit of Rs. 22,01,000 in the Bank.

4. The learned CIT (A) was not further justified in dismissing the appeal.

5. On the Fact and in law the appeal may kindly be allowed.

6. The appellant craves (prey) leave to add, amend, modify, substitute or delete any ground at the time or before hearing of appeal.”

2. Apropos ground No. 2 the assessee has challenged rejection of application for condonation of delay by the Id. CIT (A).

2.1 Having heard the Ld. DR and perusing the facts on record, we are convinced with the appellants contention that there being a short delay caused due to serious illness of the assessee in filing the appeal by him, which also gets support from the habitat of the assessee being from an interior village of Morena District, and lack of awareness of Tax Appeal procedure. The Ld. DR, although stands in support of the impugned order, however, she has no objection to the condonation of delay and remanding the matter to the CIT(A) for afresh adjudication.

2.2 The Id. CIT (A) observed that in reality, assessee has filed appeal on **08.03.2018** which is late by almost **two month and 8 days**, on the basis of facts mentioned in the Appeal Memo and the appellant had made request for 'Condonation of delay' for the reason that the assessee was suffering from serious illness and confined to bed from November 2017 to February 2018. Therefore, in view of this reason, assessee could not file the appeal in time and made request for condonation of delay. It is seen that the AO failed to furnish report regarding genuineness of assessee illness being reason the reason for the delay in filing the appeal before the CIT(A). Further, the Hon'ble Apex Court decision in the case of **"J.B. Advani & Co Pvt. Ltd V /s. R.D. Shah"**, 72 ITR 395(SC) as relied upon by the CIT(A) is distinguishable on facts. In the present case, there was a reason of serious illness, assessee from rural district and short period of 2 months and 8 days whereas in that case the appellant was Commissioner of Income Tax, a statutory authority which in continuous functioning, delay was more than 6 months and no reason of illness. Thus, the Id. CIT(A) has rejected the assessee request for condonation of delay of short period of 2 months and 8 days, in filing the appeal before him, based on presumption and conjectures and in arbitrary manner which is not convincing and can not be approved.

3. On merits, the assessee challenged that the Id. CIT (A) did not entertain the additional evidence for explaining the source of deposit of Rs. 22,01,000 in the Bank.

3.1 The assessment order was passed U/s. 144 r.w.s. 147 of the I.T. Act, 1961, by the AO, for the A.Y.201-11 dated 27. 01.2017 exparte qua the assessee. During the course of the scrutiny assessment, the AO has treated the entire amount of cash deposit of Rs.22,01,000/- as unexplained money u/s 69A of the Act. The Id. CIT(A) has confirmed the said addition of Rs.22,01,000/- as unexplained money u/s 69A of the Act, rejecting "additional evidences" being filed by the assessee under Rule 46A by way of affidavits Shri Naresh Singh & Shri Bishan Singh (brothers of the assessee) claiming that sale proceeds received by them from buyers as sale consideration from sale of jointly held land was deposited in SB A/c of the appellant, Shi Jay Singh. In support of this claim, appellant has filed copy of Sale deed and Sale Agreement. He further observed that consideration shown in "Agreement to Sale" cannot be believed as true & correct merely because it serves the purpose of the assessee. Neither the seller has confirmed the fact that he actually paid **Rs.26,87,500/-** and not **Rs.1,76,500/-** by filing affidavit explaining the reasons for having two different figures of sale considerations in the agreement to sale and the sale deed, respectively.

3.2 In our view, the Id. CIT(A) ought to have either verified the circle rates of the agricultural land from the office of land registering authority to arrive at the correct value of the land or made third party verification regarding the value of rates of land in the vicinity/ neighborhood instead of outright rejecting the additional evidence filed by assessee in casual manner. Such rejection or non-entertainment of additional evidence filed under rule 46A is unwarranted and against law. Therefore, we direct the CIT(A) to admit the additional evidence and examine the veracity of the same after affording sufficient opportunity of being heard to the assessee.

4. In view of the above facts, we acknowledge that there was sufficient and reasonable cause for the short delay in filing the appeal which has not been appreciated by the learned CIT(A). Considering the delay in filing the appeal by the assessee that was being not with any *malafide* intentions, we hereby condone the delay of 2 months and 8 days in filing the appeal before the Id. CIT(A) with the direction to adjudicate the grounds of appeal of the assessee afresh after granting sufficient opportunity of being heard within 6 months of the receipt of this order.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 20 /09/2021.

Sd/-

**(LALIET KUMAR)
JUDICIAL MEMBER**

Sd/-

**(DR. M.L. MEENA)
ACCOUNTANTMEMBER**

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I.T.A No. 23/Agra/2019

Copy forwarded to:

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

Sr. Private Secretary
ITAT, Agra