

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "SMC", NEW DELHI  
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.4088/Del/2016  
Assessment Year : 2007-08**

Manish Baxi, D-4/7, Ground Floor, DLF Exclusive Floors, DLF City Phase- 5, Gurgaon. <b>PAN : AERP8 8961 N</b>	<b>Vs.</b>	ITO, Ward- 3, Gurgaon.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri Nikhil Arora, CA  
Respondent by : Shri S. K. Jain, Sr.DR  
Date of hearing : 25-01-2017  
Date of pronouncement : 31-01-2017

**ORDER**

**PER S.V. MEHROTRA, A.M :**

This is an appeal filed by the assessee against the order dated 19.02.2013 passed by the Commissioner of Income Tax (Appeals)-2, Faridabad, u/s 143(3) of the Income Tax Act, 1961 (in short "the Act") relating to assessment year 2007-08.

2. Brief facts of the case are that the assessee, an employee of M/s Sapient Corporation Pvt. Ltd. as Manager Technology, filed his return of income declaring total income of Rs.12,81,160/-. The assessee personally attended the assessment proceedings and furnished the information as required. The assessment was completed vide order dated 18.12.2009 at a

total income of Rs.15,68,640/-. The assessee preferred an appeal before Id. CIT(A), which was dismissed as being time barred. Ld. CIT(A) observed that the demand notice was issued on 31.12.2009 at the last known address to the department and this notice did not come back unserved. He observed that the assessee filed an appeal against this order on 13.08.2010 i.e. after more than 7 months from the date on which the demand notice was issued to the assessee. He pointed out that as per requirements of section 249(2), the appeal should be presented within 30 days of the service of notice of demand.

3. Ld. counsel referred to statement of facts filed before Id. CIT(A) and pointed out that it was, *inter-alia*, stated as under :-

*“The assessee could not receive the assessment order. While knowing the fact that the assessment has been completed on 18<sup>th</sup> December, 2009, the assessee approached to the Income Tax department for getting the copy of the relevant assessment order so that the appeal can be filed. The order was obtained by depositing Rs.50 to the Income Tax Department.”*

4. Ld. counsel pointed out that the assessee got the certified copy of assessment order on 28<sup>th</sup> July, 2010 and filed the appeal before Id. CIT(A) on 13<sup>th</sup> August, 2010. These facts are not disputed by Id. Sr.DR.

5. I have considered the submissions of both the parties and have perused the record of the case. Admittedly, the assessee was not represented by any counsel before the Assessing Officer and before Id.

CIT(A), it was specifically mentioned that the copy of the assessment order was obtained by depositing Rs.50 to the Income Tax Department. Under such circumstances, in order to impart substantial justice to assessee, it would be in the interest of justice to condone the delay in filing the appeal before the Id. CIT(A) and, accordingly, the order of Id. CIT(A) is set-aside and the matter is restored back to the file of Id. CIT(A) for deciding the issue on merits. The assessee shall cooperate with Revenue and shall not seek adjournment without any valid reason.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31<sup>st</sup> day of January, 2017.

**Sd/-**  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

Dated : 31-01-2017.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)-
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar  
ITAT, New Delhi