

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC, NEW DELHI  
Before Sh. N.K. Saini, ACCOUNTANT MEMBER  
ITA No. 3391Del/2017  
Asstt. Year 2009-10**

Kanti Devi D-17 Sector-122 Noida	Vs.	ITO Ward -2(1) Noida
(Appellant)		(Respondent)
<b>PAN No. AAHPB7754M</b>		

Appellant by : None

Respondent by : Sh. T. Vashanthan, Sr. DR

Date of hearing : 18.09.2017	Date of Pronouncement: 25 .9.2017
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**ORDER**

**PER N.K.SAINI, AM :**

This is an appeal by the assessee against the order dated 30.03.2017 of CIT(A)- Aligarh.

2. During the course of hearing nobody was present on behalf of the assessee neither any adjournment was sought. I, therefore, proceed ex-parte qua the assessee.

3. The main grievance of the assessee in this appeal relates to the ex- parte order passed by the Id. CIT(A) without giving adequate opportunity of being heard and in confirming the addition of Rs. 19,58,750/- made by the AO.

4. Facts of the case in brief are that the AO issued a notice u/s 148 of the IT Act, 1961 (hereinafter referred to the Act) on 30.3.2016 on the basis of

information that the assessee along with other co-owners Smt. Santosh wife Shri Ramesh Kumar, Niyad arganj, Dadri has purchased residential plot Khata no. 605, Khet No. 13K measuring 990.687 Sq. Yards in village Chhaprola, Dadri for Rs. 37,50,000/- plus stamp duty of Rs. 1,67,500/-. Since no compliance to notice u/s 148 of the Act was made, therefore, the AO framed the assessment u/s 144 of the Act and assessed the income at Rs. 19,58,750/- ( 50% of the total consideration of sale of Rs. 37,50,000 + stamp duty of Rs. 1,67,500/-) .

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who dismissed the appeal ex parte by observing in para 3 of the impugned order as under :

*“3. The appeal was fixed for hearing for the first time and no information or any other detail was called for. The appellant had all the liberty and time available to it to enclose whatever it considered to be necessary with its appeal which was filed on 27.01.2017. The appellant which had not complied with any of the notices issued by the Id. A.O. and because of which the Id. A.O. was compelled to complete the assessment under section 144 of I.T. Act, 1961 was on its own assuming that some unspecified documents were required when no such requisition was made by this office. Even then the request of the appellant for adjournment of the case was accepted and the case was adjourned to 31.03.2017. The appellant was further informed by the office about the schedule date of hearing.*

*4. On 31.03.2017 another letter was received from the appellant stating that since necessary details required for submissions were still under compilation and it would take further two to three days since few documents were to be collected from Govt. Authorities the appellant was not able to attend the hearing.*

*5. It is not understood how the appellant was prevented from attending the hearing for want of some unspecified records which were claimed to be in the process of being collected from some unspecified Govt. Authorities. For attending the hearing no such document is necessary and no such document was prescribed*

*either. Law also does not prescribe any such document for attending the hearing. It is but obvious that the appellant was avoiding appearing in the present appeal and unnecessary and frivolous excuses were being put forward to avoid entering appearance in the present appeal.*

*6. In view of the inability of the appellant to canvass its appeal and support its case, the present appeal is dismissed for non prosecution.”*

Now the assessee is in appeal.

6. The Id. DR supported the impugned order passed by Id. CIT(A).

7. I have considered the submission of Id. DR and perused the material available on record. In the present case, it is noticed that the Id. CIT(A) himself admitted that on the request of the assessee, the case was adjourned to 31.3.2017. However, the ex parte order has been passed by the Id. CIT(A) on 30.3.2017, although this case was fixed for hearing on 28.3.2017 first time. Even Id. CIT(A) – 1 Noida put the date under his signature as 30.3.2017 and also the office Superintendent for the CIT(A), Noida office signed on the same date i.e. 30.3.2017. From the above narrated facts, I am of the confirmed view that the arbitrary action of the Id. CIT(A) is not justified and is a clear denial of the justice, the said action cannot be appreciated from any angle. Although this case deserve for awarding the cost, however, by taking a liberal view, a warning is given to the authority below that he should not act in such an arbitrarily manner and haste. It is well settled that nobody should be condemned un-heard as per the maxim “Audi Alteram Partem”. In the present case, the appeal was fixed for hearing for 28.3.2017 and on request of the assessee, the case was adjourned to 31.3.2017 but without waiting for the scheduled date of hearing, the Id. CIT(A) passed the impugned order in advance on 30.3.2017 and dismissed the appeal without providing due and

reasonable opportunity of being heard to the assessee. I, therefore, deem it appropriate to set aside the impugned order and the matter is remanded back to the file of the Id. CIT(A) to be adjudicated afresh in accordance with law, after providing a due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Open Court on 25 .09.2017.)

Sd/-

(N.K.Saini)

ACCOUNTANT MEMBER

Dated : 25 /09/2017

\*Binita\*

Copy forwarded to :

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	18.09.2017		
2.	Draft placed before author	18.09.2017		
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			