

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
ITA No. 3682, 3683/Del/2017
Asstt. Year : 2012-13**

Kewal Lakhera House No. 130, Gyan Khand-IV, Indira Puram Ghaziabad	Vs	ITO Ward-1(3) Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. ABWPL3403B		

**Assessee by : Sh. Anoop Sharma, Sanjay Parashar, Adv.
Revenue by : Sh. T.Vasanthan, Sr. DR**

Date of Hearing : 28.09.2017	Date of Pronouncement : 28 . 09.2017
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ORDER

Per R.K.Panda, AM:

The above two appeals filed by the assessee are directed against the separate orders dated 31st March, 2017 of the CIT(A)- Ghaziabad relating to assessment year, 2012-13.

ITA No. 3682/Del/2017 :-

2. Grounds raised by the assessee are as under :-

1. *That on the facts and in circumstances of the case and in law, the ld. CIT(A) erred in deciding the appeal without providing due opportunity.*
2. *That on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal without adverting to the merits of the claim, and through a completely non-speaking order.*

3. *That on the facts and in circumstances of th case and in law, the Ld. CIT(A) erred in confirming the addition for long term capital gain of Rs. 797135.*

ITA no. 3683/Del/2017:-

3. Grounds raised by the assessee are as under :-
 1. *That on the facts and in circumstances of the case and in law, the ld. CIT(A) erred in deciding the appeal without providing due opportunity.*
 2. *That on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deciding the appeal without adverting to the merits of the claim, and through a completely non-speaking order.*
 3. *That on the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty of Rs. 165367 u/s 271(1)(c) of the Act.*
4. The ld. Counsel for the assessee at the outset submitted that the assessee had filed his return of income on 31.03.2013 declaring income of Rs. 2,77,940/-. The AO completed the assessment u/s 143(3) determining the total income at Rs. 10,86,324/-. The Assessee filed an appeal before the CIT(A). However, due to non-appearance from the side of assessee, the Ld. CIT(A) dismissed the appeal for non-prosecution. Similarly, he also confirmed the penalty of Rs. 1,65,367/- levied by the AO u/s 271(1)(c) of the IT Act. He submitted that the ld. CIT(A) has not decided the issue on merit. He submitted that in the interest of justice, the assessee should be given one final opportunity to substantiate his case.
5. The Ld. DR On the other hand strongly opposed the arguments advanced by the Ld. Counsel for the assessee. Referring to the order

of the CIT(A), he submitted that ample opportunity was given to the assessed by Id. CIT(A). Therefore, the case need not be restored to the file of the CIT(A) and the appeals filed by the assessee should be dismissed.

6. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I find from the order of the CIT(A) that he has dismissed the appeal filed by the assessee due to non-appearance and has not decided appeals on merit. It is the settled proposition of law that the Id. CIT(A) cannot simply dismiss the appeal for non prosecution and he has to decide the appeal on merit. Since in the instance case, the appeals have not been decided on merit, therefore, I deem it proper to restore the issues to the file of the Id. CIT(A) with a direction to decide the issue on merit after giving due opportunity of being heard to the assessee. The assessed is also hereby directed to appear before the CIT(A) and not to seek any adjournment under any pretext. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

(Order Pronounced in the Court at the time of hearing itself i.e. on 28.09.2017)

Sd/-

(R.K.Panda)

ACCOUNTANT MEMBER

Dated: 28/09/2017

Binita

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

		Date	<u>Initial</u>	
1.	Draft dictated on	28/09/2017		
2.	Draft placed before author	28/09/2017		
3.	Draft proposed & placed before the second member	/09/2017		
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
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.			