

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
ITA No. 1320/Del./2017
Asstt. Year : 2007-08**

Alka Arora 4997-98, Sirkiwalan Hauz Quazi New Delhi PAN-AACPA0602L [Appellant]	Vs.	DCIT Circle-8(1) New Delhi [Respondent]
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Appellant by :	Sh.Somil Agarwal, Adv.
Respondent by	Sh. T. Vasanthan, Sr. D.R.

Date of Hearing:	23	08	2017
Date of pronouncement:	28	09	2017

ORDER

PER DIVA SINGH, JUDICIAL MEMBER :

The present appeal has been filed by the assessee assailing the correctness of the order dated 24.01.2017 of CIT(A)-22 , New Delhi pertaining to 2007-08 Assessment Year on various grounds including ground no. 1 & 2 which read as under :

- *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*
 - *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in framing the impugned re-assessment order u/s 143(3)/147, is bad in law and against the facts and circumstances of the case.”*
2. A perusal of the record shows that the assessee even before the CIT(A) raised the jurisdictional issue by raising the following specific ground amongst other grounds as ground no. 1 :-
- *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned reassessment order u/s 147/143(3) and that too without assuming jurisdiction as per law and without complying with the mandatory conditions u/s 147 to 151 as envisaged under the Income Tax Act, 1961.*
3. A perusal of the record shows that the CIT(A) dismissed the appeal holding as under :-

“ This appeal is squarely covered against the appellant by the decision of the undersigned in the case of appellant’s husband and co-share holder in payer company, Sh. Vikas Arora in appeal no. 147/16-17 vide order

dated 23.01.2017. Therefore, following the said order, the appeal is dismissed.”

4. Ld. AR at the time of hearing submitted that the order in the case of the husband has also been challenged and is pending before the ITAT. It was his submission that no doubt on the merits of the addition though the facts may be said to be more or less be identical, however, on the jurisdictional issue which had also been raised in the present proceedings, there were some minor distinctions on facts inasmuch as in the present case, the proceedings were undertaken by an assessing officer who did not have jurisdiction over the assessee. The said issue accordingly it was submitted could not have been decided in the husband's case on which reliance has been placed. Accordingly it was his submission that a non-speaking order has been passed as reliance has been placed on the order passed in the case of the husband where on the issue of jurisdiction, there were material distinctions on facts. In the circumstances, the prayer was made that the order may be set aside.

5. The ld. Sr. DR placed reliance on the impugned order, however, in the absence of any relevant discussion on the specific facts of the case, he could not defend the same and he merely relied upon section 124(3) of the Act stating that its applicability may also be considered by the CIT(A).

6. I have heard the submission and perused the material available on record. I find that in the absence of the any discussion in the order, the correctness of the assertion of the Ld. AR cannot be verified. Since the first issue which was to be decided is the jurisdictional issue itself and in the absence of any discussion thereon, the order passed is a non-speaking order. Accordingly, it is deemed appropriate to set aside the impugned order back to the file of the CIT(A) with the direction to first independently decided the jurisdictional issue and thereafter if need be to proceed to decide the issue on merits. The ld. Sr. DR has requested that the assessing Officer may also be directed to be given an opportunity by the CIT(A). The Ld. CIT(A) may take note of the statutory requirement as per law. It is hoped that the opportunity so provided is not abused by the assessee and is utilised by making full and proper compliances before the CIT(A) as in the event of abuse of the same, the CIT(A) would be at liberty to pass a speaking order on the basis of material available on record.

7. In the result the impugned order is set aside back to the file of CIT(A) to decide the same de novo.

Order Pronounced in the Open Court on 28th September,2017.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

DATED: 28.09.2017

Binita(DLI)/*Poonam*(CHD)

Copy forwarded to:-

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

Assistant Registrar