

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI
BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
ITA No. 2367/Del./2017 : Asstt. Year : 2007-08**

Kopal Papers (P) Ltd. C/o. M/s. RRA Taxindia, D-28, South Extension Part-I New Delhi PAN-AACCK7281L [Appellant]	Vs.	ITO Ward-14(4), 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 16.02.2017 of CIT(A)-5 , New Delhi pertaining to 2007-08 assessment year on various grounds including ground no. 1 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 147/143(3), is bad in law and against the facts and circumstances of the case."*

2. The Ld. AR inviting attention to the specific ground submitted that the arguments in support of the said grounds have been addressed in para 3.5 as written submissions of the assessee before the CIT(A) have been reproduced by the CIT(A) in his order. Further submissions thereon have also been reproduced in para 3.6.4 of his order but the fact remains that jurisdictional issue has not been decided by the CIT(A). It was his submission that in fact both the issues i.e. the issue on the merits of the addition as well as the jurisdictional issue has been considered together by the CIT(A). Consequently a specific finding could not be given. In the circumstances, it was his prayer that since the jurisdictional issue goes to the root of the assessment order, the said issue should have been decided first. Accordingly it was a limited prayer that the issue may be restored that the CIT(A) to first consider the jurisdictional issue.

3. Ld. Sr. DR considering the impugned order had no objection if the matter is remanded to the CIT(A) for deciding the jurisdictional issue first.

4. I have heard the submission and perused the material available on record. The law is well settled in as much as that in case the jurisdictional issue is raised by a party, then the said issue should be necessarily first decided as the issue on merit will become live only if on jurisdiction the order is held to be maintainable. Accordingly, in the light of the submission of the party before the Bench, I am of the view that it would be appropriate to set aside the impugned order in toto. The appeal, accordingly is restored back to the file of the CIT(A) with the direction to first decide the jurisdictional issue and thereafter to proceed to decide the issue on merit if need be. Needless to say that a reasonable opportunity of being heard shall be granted to the assessee. While so directing 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). In the eventuality of abuse of the same, the CIT(A) would be at liberty to pass an order on the basis of material available on record.

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

(Order Pronounced in the Open Court on 28th Sept., 2017)

Sd/-

(DIVA SINGH)

Judicial Member

DATED: 28.09.2017

Binita(Delhi)/Poonam(CHD)

Copy forwarded to:-

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

Assistant Registrar