

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER**

SA No. 544/DEL/2017
(Arising out of ITA No. 6006/Del/2017)

&

ITA No.6006/Del/2017
Assessment Year 2008-09

Manju Arora, C-29, Sector-40, Noida-201301	Vs.	ITO, Ward-2 Noida
(Appellant)		(Respondent)

Appellant by :	Sh. Satyen Sethi & Sh. Arta Trana Panda, Advocates
Respondent by :	Sh. T. Vasanthan, Sr. DR

सुनवाई का तारख/Date of Hearing : 03/10/2017
घोषणा का तारख/Date of Pronouncement: 05 /10/2017

ORDER

PER B.P. JAIN, A.M.

This appeal of the assessee arises from the order of learned CIT(A)-1, Noida, vide assessment order dated 23.2.2017 for the Assessment Year 2008-09. The assessee has also filed the stay application which has not been pressed since the main appeal of the assessee has been argued. Accordingly, the stay application of the assessee bearing no. 544/Del/2017 is dismissed.

2. We take up the appeal of the assessee in ITA No. 6006/Del/2017 and the grounds raised are as under:-

1. *That on the facts and circumstances of the case and in law. the commissioner of Income Tax (Appeals)-I, Noida [the CIT(A)] has erred in dismissing the appeal against the assessment order dated*

3.3.2016 as incompetent allegedly for the reason that demand notice and challan of appeal fee were not submitted.

2. That on the facts and circumstances of the case and in law, demand notice and challan of payment of appeal fee were not only submitted with the memorandum of appeal filed on 13.4.2016 but the demand notice was filed on 2.1.2017 as well. Further, the Appellant was never put to notice that challan of Rs. 1,000/- was not on record. Hence, the appeal was wrongly dismissed as incompetent.

3. Without prejudice, on the facts and circumstances of the case and in law. Pursuant to the liberty granted by the impugned order dismissing the appeal, both the demand notice and challan of appeal fee were furnished on 11.4.2016. However, no action to restore the appeal has been taken by the CIT(A).

4. That on the facts and circumstances of the case and in law, the CIT(A) erred in upholding the addition of Rs.43,00,000/- made on the premise that the Appellant has purchased immovable property amounting to Rs.43,00,000/-, though actually no property was purchased by the Appellant during the relevant year.

That the appellant craves leave to add, alter, amend or vary any of the ground either at or before the hearing of the appeal.

3. The main contention of the assessee is that demand notice and challan of the appeal fee were filed in time and thereafter also but the learned CIT(A) has dismissed the appeal of the assessee.

4. I have heard the rival contention and perused the facts of the case. It is pertinent to reproduce the order of the learned CIT(A)-1 as under:-

“The present appeal is filed by the appellant against an assessment order dated 03.03.2016 passed by the ld. AO under Section 143(3) of I.T. Act, 1961, for A.Y. 2008-09 without enclosing the demand notice or the challan for the fee paid for filing this appeal. Though in the covering letter it is stated that both the documents are being filed. The appeal being incompetent is dismissed. The impugned assessment order stands confirmed. However, liberty is granted to the appellant to file the pre-requisite documents as per law.”

5. The dismissal of the appeal by the learned CIT(A) is mainly because the assessee did not file the demand notice and challan for the fees paid for filing the appeal, which infact is available at PB 26 and 27 and the same was submitted to the CIT(A) on 2nd January, 2017 and thereafter on 6.4.2017 whereas appeal was decided on 23.2.2017 and till that time the demand notice and challan were on record. Therefore, learned CIT(A) is not justified in making the hurried order by alleging that the assessee has not filed the demand notice and challan for the fees paid for filing the appeal. In any case, the challan for the fees paid and demand notice are on record for which the learned DR has conceded the facts and accordingly in the interest of justice, the matter is set aside to the file of the learned CIT (A) who will decide the appeal on merit. Learned CIT(A) is directed to list the case on 2nd November, 2017 and provide adequate opportunity of being heard to the assessee and decide the case afresh on merit.

6. In the result, the appeal of the assessee in SA No. 544/Del/2017 and ITA No. 6006 /Del/2012 is allowed.

Order pronounced in the open court on this day 05/10/2017.

(B.P. JAIN)
ACCOUNTANT MEMBER

Dated: 05/10/2017
SH

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation	07.06.2017
2.	Date on which the draft is placed before the Dictating Member	07.06.2017
3.	Draft placed before the other Member	
4.	Approved draft comes to the Sr. PS/PS	
5.	Kept for pronouncement on	
6.	Final order received after pronouncement	
7.	File sent to the Bench Clerk	
8.	Date on which files goes to the Head Clerk	
9.	Date on which file goes to the Assistant Registrar	
10.	Date of dispatch of order	

