

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

ITA No. 3264/DEL/2017 (A.Y 2012-13)

Sanish Gupta 30/72, Punjabi Bagh West New Delhi AHSPG2681A (APPELLANT)	Vs	DCIT Circle 13(1) New Delhi (RESPONDENT)
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ITA No. 3265/DEL/2017 (A.Y 2012-13)

Manish Gupta 30/72, Punjabi Bagh West New Delhi AHQPG7427G (APPELLANT)	Vs	DCIT Circle 13(1) New Delhi (RESPONDENT)
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Appellant by	Sh. Rahul Girdhar, CA
Respondent by	Sh. Amit Jain, Sr DR

Date of Hearing	23.10.2017
Date of Pronouncement	23.10.2017

ORDER

PER R. K. PANDA , AM

These two appeals filed by the respective assesseees are directed against the separate orders dated 20th March, 2017 and 3rd January 2017 respectively of the CIT(A)-5, New Delhi relating to Assessment Year 2012-13. Since identical grounds have been taken by the respective assesseees in both the appeals, therefore, these appeals were heard together and are being disposed of by this common order for the sake of convenience.

The grounds of appeal are as under:- **ITA No. 3264/DEL/2017**

- “1. *On facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of the claim of cost of construction amounting to Rs.2424454/- (being 20% of the total cost of construction) while computing the capital gain.*
2. *On facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in law in upholding the part disallowance of the claim cost of improvement amounting to Rs.202508/- (being 20% of the total cost of construction) while computing the capital gain.*

Identical grounds have been taken ITA No. 3265/Del/2017

- “1. *On facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in law in upholding the disallowance of the claim of cost of construction amounting to Rs.2424454/- (being 20% of the total cost of construction) while computing the capital gain.*
2. *On facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) has erred in law in upholding the part disallowance of the claim cost of improvement amounting to Rs.202508/- (being 20% of the total cost of construction) while computing the capital gain.*
3. At the time of hearing, it was seen that both the appeals have been decided ex-parte by the Ld. CIT(A). due to non appearance by the respective assesseees. The Learned counsel for the assessee submitted that the counsel who was appointed to look after the appeal matters did not appear before the CIT(A) nor intimated the assessee about the notice of hearing. He submitted that although assessee has not taken any action against the concerned counsel by referring the matter to the disciplinary committee of the ICAI, however, his payment has been stopped. He submitted that in the interest of justice the respective assesseees should be given an opportunity to substantiate their case.
4. The Ld. DR, on the other hand, strongly opposed the arguments advanced by the Ld. Counsel for the assessee. He submitted that the Ld.CIT(A)

has passed detailed orders while sustaining the addition made by the A.O. Therefore, the order of the Ld.CIT(A) should be upheld and the grounds raised by the assesseees should be dismissed.

5. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that due to non-appearance by the respective assesseees before the CIT(A), he has decided the appeal ex-parte and sustained the addition made by the A.O by passing detailed order. It is the submission of the Ld. Counsel for the assessee that given an opportunity the assesseees are in a position to substantiate their cases. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore both the appeals to the file of the CIT(A) for deciding the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The respective assesseees are also hereby directed to appear before the Ld.CIT(A) and not seek any adjournment under any pretext. The appeals filed by the respective assesseees are accordingly allowed for statistical purpose.

Pronounced in the open court at the time of hearing itself, i.e. on
23rd October , 2017.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 23/10/2017

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	23/10/2017	PS
2.	Draft placed before author	23/10/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	24.10. 2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS

		24.10.2017	
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.		