

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

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 5856/Del/2017 : Asstt. Year : 2008-09**

Sh. Jayveer, Legal Heir of Late Harcharan, Village-Jhatta, Pargana Dankaur, G.B. Nagar, Noida	Vs	Income Tax Officer, Ward-1(4), Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. BDCPJ1173P</b>		

**Assessee by : None**

**Revenue by : Ms. Ashima Neb, Sr. DR**

<b>Date of Hearing : 12.12.2017</b>	<b>Date of Pronouncement : 13.12.2017</b>
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**ORDER**

This is an appeal by the assessee against the order dated 30.06.2017 of Id. CIT(A)-I, Noida.

2. Following grounds have been raised in this appeal:

*“1. On facts as well as in law, assessment order is illegal and invalid, it being in the name of deceased person.*

*2. On facts as well as in law, whole proceedings are void ab-initio because neither any notice U/s. 148 have been served nor any of notices U/s. 142(1) referred to in Assessment Order have been served, and there is no question of service of these notices, these being in name of deceased who cannot receive the same.*

*3. The proceedings are also bad in law and void having been started without making any enquiries. Mere purchase of property does not give belief for escapement*

*unless enquiries are made. Proceedings cannot be started on presumption as indicated by the Id. A.O. in line 7 on page-1 of assessment order.*

*4. Ex-parte order of the Id. CIT(A) are bad in law as no notice was served on the Appellant.*

*5. The Ld. CIT(A) has also erred on facts as well as in law in not noting position that appeal is in case of legal heir and consequently the proceedings U/s. 148 and assessment in name of deceased is void ab-initio.*

*It is therefore prayed that assessment may kindly be quashed.”*

3. The main grievance of the assessee in this appeal vide Ground No. 4 relates to the *ex-parte* order passed by the Id. CIT(A) without service of notice.

4. Facts of the case in brief are that the AO framed the assessment, *ex-parte* u/s 147/144 of the Income Tax Act, 1961 and made the addition of Rs.16,22,042/-.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) who dismissed the appeal *ex-parte* by observing as under:

*“2. The case was fixed for hearing for 29.05.2017 on 25.05.2017 neither the appellant appeared nor any adjournment was sought. It appears that the appellant is not serious to prosecute its case and no meaningful purpose is to be served by keeping the appeal further pending. The impugned assessment order is therefore confirmed in view of non prosecution of the appeal by the appellant. The appeal of the appellant fails and is dismissed.”*

6. Now the assessee is in appeal.

7. I have considered the submissions of ld. DR, nobody was present on behalf of the assessee. In the present case, it is noticed from the observation of the ld. CIT(A) that the case was fixed for hearing on 29.05.2017. However, the appeal was dismissed by observing that nobody appeared nor any adjournment was sought on 25.05.2017. I am not able to understand when the case was fixed for hearing on 29.05.2017 how, the assessee could have appeared on 25.05.2017. I, therefore, set aside the impugned order and the matter is restored to the file of the ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

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

(Order Pronounced in the Court on 13/12/2017)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 13/12/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**