

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

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER

I.T.A .No. 2392/DEL/2015 (A.Y 2009-10)

Naveen Solanki Plot No. 42, Pocket-L, DSIDC, Sector-5, Bawana, Delhi BDPPS5039G (APPELLANT)	Vs	ITO Ward-21(2) New Delhi (RESPONDENT)
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Appellant by	Sh. Daljit Singh, Adv
Respondent by	Sh. Nirmal Jit Singh, SR. DR

Date of Hearing	04.12.2017
Date of Pronouncement	08.12.2017

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the assessee assailing the correctness of the order dated 27/02/2015 of CITA-XIII, New Delhi pertaining to 2009 – 10 assessment year.

2. Referring to the revised grounds filed by the assessee in response to the directions of the Bench the Ld. AR submitted that the assessee assails the correctness of the order on the grounds that the order passed is a nonspeaking order. Accordingly the limited prayer of the Ld. AR is that the impugned order may be set aside back to the file of the CIT(A) with a direction to pass a speaking order considering the submissions of the assessee. Referring to the record it was submitted that the assessee had filed an application under rule 46A praying for admission of fresh evidences. Application dated 18.02.2013 filed before CIT Appeals demonstrating the availability of funds with the donors

pat the relevant point of time. It was his submission that the said application had not been disposed by the CIT Appeals. The fresh evidence sought to be admitted by the assessee it was submitted was supported by an affidavit dated 30th October 2017 of the assessee filed in the present proceedings affirming the contents of the application having been filed before the CIT Appeals.

3. The Ld. Senior DR Mr. Nirmal Jeet Singh considering the grounds the relevant documents supported by an affidavit of the assessee had no objection to remand of the issue to the CIT(A) Appeals. However it was his submission that the correctness of the evidences may not be decided and the issue may be left open to the CIT Appeals.

4. I have heard the submissions and perused the material available on record. A perusal of the record shows that CIT Appeals has discussed the reasons of the assessing officer for making the addition however the impugned order does not record what has been argued on behalf of the assessee or for that matter why the assessee's explanation is considered to be not acceptable. In the light of the submissions the parties before the Bench and considering the material available on record. I find that admittedly the impugned order does not fulfill the requirements of Section (6) of Section 250 of the Income Tax Act 1961 and thus cannot be said to be a speaking order. Accordingly in view of these peculiar facts and circumstances the impugned order is set aside back to the file of the CIT Appeals with a direction to pass a speaking order in accordance with law considering the fresh evidence filed and after giving the assessee a reasonable opportunity of being heard. Said order was announced in the presence of the parties on the date of hearing, itself.

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

Order pronounced in the Open Court on 08th December, 2017.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Dated: 08/12/2017
*DNS/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	05/12/2017	PS
2.	Draft placed before author	06/12/2017	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	08.12.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	08.12.2017	PS
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.		

