

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

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

**ITA No. 89/Del/2018 : Asstt. Year : 2009-10**

Gopal Krishan Dubey (Prop. M/s G. P. Exports), A-33, Sector-10, Noida, G. B. Nagar, U.P	Vs	Income Tax Officer, Ward-1(4), Noida
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAXPD2991A</b>		

**Assessee by : Sh. R. R. Maurya, CA  
Revenue by : Sh. B. R. Mishra, Sr. DR**

<b>Date of Hearing : 04.06.2018</b>	<b>Date of Pronouncement : 04.06.2018</b>
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**ORDER**

This is an appeal by the assessee against the order dated 25.09.2017 of  
1d. CIT(A)-I, Noida.

2. Following grounds have been raised in this appeal:

*“1. That the order of the Ld. CIT (A) is bad in law and against the statutory provisions.*

*2. On the facts and in circumstances of the case and in law the Ld. CIT (A) has erred in suo-motu recording finding that the assessment order passed by the Assessing Officer without issuing statutory notice u/s 143(2) of the Act.*

*3. On the facts and in circumstances of the case and in law the Ld. CIT(A) has erred in sustaining the addition of Rs. 8,27,735/- on account of Short Term Capital Gain made by the AO by invoking provisions of section u/s 50C of the Act.*

*4. On the fact and in circumstances of the case and in law the Ld. CIT(A) has erred in not determining the appeal on the merit that provisions of sections OC are not applicable to the lease hold property.*

5. *On the facts and in circumstances of the case and in law the Ld. CIT(A) has erred in not determining all grounds of appeal taken by the appellant.*

6. *The appellant craves leave to add, alter, omit or substitute any or all of the above grounds of appeal, at any time before or at the time of appeal."*

3. During the course of hearing, the Id. Counsel for the assessee pointed out that the impugned order is not in existence, since the same has been recalled by the Id. CIT(A) on the application moved by the assessee as well as the AO. He gave in writing as under:

*"Hon'ble Member*

*Captioned appeal of the assessee is fixed for hearing on 04.06.2018 is filed against the CIT(A) order dated 25.09.2017. Ld. CIT(A) impugned order dated 25.09.2017 suo-motu adjudicated the ground regarding issuance of notice u/s 143(2) of the act and not decided the others grounds raised by the appellant. Relevant par 3 of the CIT(A) order at pg. 1 asunder:*

*"3. The Ld Counsel for the appellant at the very beginning submitted that the impugned assessment order was passed by the Ld. A. O. without issuing notice under section 143(2) of IT Act, 1961 and was therefore bad in law"*

*It is submitted that appellant has not challenged the AO order on this issue. Considering that there is no dispute between the appellant and the revenue on the issue of issuance of notice u/s 143(2) of the Act and it was duly received by the appellant, Ld.CIT(A) on an application filed by AO as well as appellant on 02.01.2018 recall his order dated 25.09.2017 to decide the appeal on merit. The appeal has been heard by CIT(A) on 23.05.2018 and the order is still awaited. Copy of assessee application along with CITA) order dated 21.05.2018 recalling his order attached as **Annexure-1 & 2.***

*It is therefore requested that captioned appeal may kindly be adjourned to any other date till disposal of the appeal by the CIT(A).”*

*New Delhi.  
Dated. 29.05.2018*

*Yours faithfully  
Sd/-  
R. R. Maurya  
Counsel or the appellant*

4. The Id. Sr. DR submitted that since the impugned order is not in existence, this appeal becomes infructuous.

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the impugned order dated 25.09.2017 has been recalled by the Id. CIT(A) on the application moved u/s 154 of the Income Tax Act, 1961 by the assessee as well as the AO. Therefore, the present appeal now becomes infructuous.

6. In the result, appeal of the assessee is dismissed as infructuous.

(Order Pronounced in the Court on 04/06/2018)

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

**Dated: 04/06/2018**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**