

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI**

**BEFORE SH.BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. O.P.KANT, ACCOUNTANT MEMBER**

**ITA No.5716/Del/2016
[Assessment Year: 2008-09]**

Rama Kant Sharma, S/o-Shri Ram, House No.A-113, Alpha-1 st , Greater Noida, Distt.-Gautam Budh Nagar, Uttar Pradesh. PAN-BEAPS3992C	vs	ITO, Ward-3(1), Aayakar Bhawan, A-2D, Sector-24, Noida.
(Appellant)		(Respondent)
Appellant by	Sh. Rajiv Saxena, Adv.	
Respondent by	Sh. Atiq Ahmed, Sr.DR	
Date of Hearing	28.06.2018	
Date of Pronouncement	28.06.2018	

ORDER

PER BHAVNESH SAINI, JUDICIAL MEMBER

This appeal by the assessee has been directed against the order of Ld.CIT(A)-I, Noida dated 24.06.2016 for AY 2008-09.

2. Briefly the facts of the case are that the AO passed an assessment order u/s 147/144 of the Income Tax Act, 1961 (in short "Act"). The AO noted in the assessment order that no return of income has been filed by the assessee. The assessee without filing the return of income, attended the proceedings before the AO. The assessee filed reply and the details on the basis of which the AO made several additions against the assessee and assess the total income at Rs.82,27,070/-. The assessee preferred appeal before Ld.CIT(A). Ld.CIT(A) noted that several notices have been issued to the assessee for hearing of the appeal. However, the assessee did not make any response to the statutory

notices issued for disposal of the appeal. Ld.CIT(A) in the absence of any representation from the side of the assessee and considering it to be a high demand case, dismissed the appeal of the assessee for non-prosecution.

3. We have heard Ld. Representatives of both the parties and perused the findings of the authorities below. The assessee in this case moved application for early hearing in which it is explained that Ld.CIT(A) dismissed the appeal of the assessee for non-prosecution and has not adjudicated the grounds of appeal. The order of Ld.CIT(A) is required to be set aside before Ld.CIT(A) for adjudicating the grounds of appeal raised before Ld.CIT(A) on merits. In this view of the matter, early hearing has been granted to the assessee. The appeal is fixed today i.e. 28.06.2018 for hearing. The assessee, however, sought adjournment which is rejected considering it to be improper in view of the facts noted above.

3.1. After considering rival submissions, we are of the view that the matter requires re-consideration at the level of Ld.CIT(A). According to Section 250(6) of the Act, Ld.CIT(A) is required to mention point for determination in the appellate order and reasons for decision while disposing the appeal of the assessee. However, Ld.CIT(A) did not decide the appeal of the assessee on merit and without giving reasons for decision, dismissed the appeal of the assessee for non-prosecution. Thus, the order of Ld.CIT(A) cannot be sustained in law. Further, even if the assessee did not appear before Ld.CIT(A), he is required to pass the order on merits giving reasons for decision in the appellate order. Ld. Counsel for the assessee, however, submitted that the matter may be remanded to the AO or that the appeal of the assessee be decided on merit.

The prayer of Ld. Counsel for the assessee is without any substance and is improper, the same is accordingly rejected. The Tribunal has been hearing the appeal of the assessee against order of Ld.CIT(A), therefore, the matter shall have to go back to Ld.CIT(A) for deciding the appeal on merit as per law. It is important to note that the assessee in application for early hearing made a similar request that the order of the Ld.CIT(A) is required to be set aside because the appeal of the assessee has been dismissed for non-prosecution and matter shall have to go back to the file of Ld.CIT(A) for deciding the appeal on merits. The request of the assessee for remanding the matter to the file of the AO or deciding on merit is without any basis, the same is accordingly rejected. In view of the above discussion, since Ld.CIT(A) has not passed the reasoned order on merits, we set aside the impugned order and restore the appeal of the assessee to the file of Ld.CIT(A)-1, Noida with the direction to re-decide the appeal of the assessee on merits strictly as per law. Ld.CIT(A) shall pass the order on merit giving reasons for decision in the appellate order by giving reasonable sufficient opportunity of being heard to the assessee and the AO.

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

Order pronounced in the open court.

**Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER**

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

*Date:-28.06.2018
*Amit Kumar**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI