

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH FRIDAY NEW DELHI**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.6046/Del/2018  
Assessment Year: 2009-10**

**ITA No.6048/Del/2018  
Assessment Year: 2009-10**

**Stay Application No. 673/Del/2018  
(IN ITA No.6046/Del/2018)  
Assessment Year: 2009-10**

**Stay Application No. 674/Del/2018  
(IN ITA No.6048/Del/2018)  
Assessment Year: 2009-10**

Arsh Bread and Bakery Pvt. Ltd., 61, Corner Market, Malviya Nagar, New Delhi. (PAN: AAHCA5434G)	<b>vs</b>	ITO, Ward 1(1), Ghaziabad.
Appellant		Respondent

**Assessee by : Shri Deepak Chopra, Adv.  
Department by: Smt. Rashmita Jha, CIT DR**

**Date of hearing : 28.09.2018  
Date of pronouncement : 28.09.2018**

**ORDER**

**PER BENCH :**

The ld. AR at the outset submitted that although the applicant was praying for stay of outstanding demand of Rs.74,38,031/- for

assessment year 2009-10 in Stay application no. 673/Del/2018 and another stay of demand of Rs. 26,85,250/- for the same assessment year in Stay application no. 674/Del/2018, it was apparent from the face of the record that both the assessee's captioned appeals were challenging the *ex parte* order passed by the ld. Commissioner of Income Tax(A) wherein the ld. Commissioner of Income Tax(A) had dismissed the assessee's appeal challenging the assessment framed u/s 147 r/w 144 of the Income Tax Act, 1961 (hereinafter called 'the Act') as well as the assessee's challenge to order of penalty passed u/s 271(1)(c).

2. The ld. AR submitted that in the interest of justice, both the appeals should be restored to the file of the ld. Commissioner of Income Tax(A) and in such a case, the stay applications would become infructuous.

3. The ld. DR had no objection to the appeals being restored to the file of the ld. Commissioner of Income Tax(A).

3.1 Accordingly, in view of the fact that the ld. Commissioner of Income Tax(A) has dismissed both the appeals of the assessee *ex parte* without going into the merits of the case, we deem it fit to restore both the appeals to the file of the ld. Commissioner of Income Tax(A) with a direction to decide both the appeals on

merits by passing a speaking order after giving proper opportunity to the assessee to present its case. Accordingly, both the appeals stand allowed for statistical purposes.

3.2 Since the assessee's appeals have been allowed, the above captioned stay petitions become infructuous and the same are dismissed.

4. In the result, the appeals of the assessee are allowed while the stay applications are dismissed.

Order pronounced in the open court on 28<sup>th</sup> September, 2018.

**Sd/-**

**(R.K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 28th SEPTEMBER, 2018  
'GS'

Copy forwarded to: -

- 1) Appellant
- 2) Respondent
- 3) CIT(A)
- 4) CIT
- 5) DR

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By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	