

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

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER**

**I.T.A .No.-4568/Del/2018  
(ASSESSMENT YEAR-2009-10)**

Jagdish Tyagi House No. B-189, Village-Dundhahera, Near ABES College, NH-24, Ghaziabad, Uttar Pradesh. <b>PAN No. ANWPT5337L</b>  <b>(APPELLANT)</b>	vs	ITO Ward 1(3), Ghaziabad.  <b>(RESPONDENT)</b>
<b>Appellant by</b>	<b>Shri V.K. Tulsian, CA</b>	
<b>Respondent by</b>	<b>Shri S.L. Anuragi, Sr. DR</b>	

<b>Date of Hearing</b>	<b>22/11/2018</b>
<b>Date of Pronouncement</b>	<b>22/11/2018</b>

**ORDER**

This appeal filed by the Assessee is directed against the impugned order dated 25.07.17 of the Ld. CIT(A), Ghaziabad relevant to assessment year 2009-10 on the following grounds:

1. *“Whether the CIT(A) was justified by upholding the Assessment Order passed u/s 147/144 which is contrary to law, void ab-initio because it was beyond the jurisdiction.*
2. *Whether the CIT(A) was justified by upholding the AO exercise of assumption of jurisdiction u/s 147 which all are based upon a piece of partial information and thereafter straight forward issue of notice u/s 148.*
3. *Whether the CIT(A) was justified by upholding the additions made of Rs. 27,12,000/-, towards college fee paid on behalf of Ankush Tyagi son of Appellant to medical college, in mechanical/Arbitrary manner.*

4. *Whether the CIT(A) was justified by upholding the order which is based on action on third party even without examining the nature of evidence and its verification in terms of settled law.*
5. *The Ld. CIT(A) erred in confirming the addition without appreciating to that merits that the appellant had duly discharged his primary onus as called.*

*The appellant craves leave to add, alter, amend or vary from the above facts/statements at or before the time of the hearing.”*

2. The facts narrated by the revenue authorities are not disputed by both the parties, therefore, there is no need to repeat the same for the sake of convenience.

3. At the time of hearing, Ld. AR for the assessee stated that Assessing Officer has not given sufficient opportunity to substantiate the claim of the assessee and passed ex parte order dated 04.03.2016 u/s 147/144 of the Income Tax Act, 1961 against the assessee. He mainly argued that assessee has not received any show-cause notice u/s 144/148/142(1) of the Income Tax Act, 1961 for the AY 2009-10 in dispute. The revenue authority has raised the demand in dispute without serving the notice upon the assessee and he undertakes to appear before the Assessing Officer, if this Bench give an opportunity to the assessee for producing evidences for substantiating his claim before the Assessing Officer. He requested that the matter may be set aside to the Assessing Officer *de novo*. Ld. DR has not raised any objection on the request of the Assessee's AR.

4. I have heard both the parties, perused the relevant records available with me. I find that AO has completed the assessment u/s 147/144 of the Income Tax Act, 1961 vide order dated 04.03.2016. No doubt the AO has issued notice to the assessee and in response to the same assessee nor his authorized representative appeared nor filed any reply and AO completed the assessment in dispute on 04.03.2016.

5. Aggrieved by the assessment order, assessee filed an appeal before Ld. First Appellate Authority who has also decided the same against the assessee without deciding the ground no. 2 which is reproduced as under: -

*“2. The assessee has not received show cause notice u/s 144/148/142(1) of pending assessment proceeding for AY 2009-10, therefore, assessee has not produced any reply to the Ld. Assessing Officer.”*

6. I have also perused the assessment order as well as impugned order passed by the Ld. First Appellate Authority and I am of the view that Ld. First Appellate Authority has not decided the issue regarding service of notice u/s 144/148/142(1) of the Income Tax Act, 1961 relating to the AY 2009-10. Therefore, in the interest of justice, as undertaking given by the Ld. AR for the assessee that assessee or his authorized representative will appear before the Assessing Officer, if this matter is set aside to the AO for *de novo* assessment and having all necessary evidences for substantiating claim of the assessee. In the interest of justice, I set aside the issue in dispute to the AO to decide the same afresh as per law *de novo*, after giving full opportunity to the assessee and the assessee through his Counsel to

appear before the AO on 15.01.2019 at 10.00 a.m. and produce all the documents to substantiate his claim. There is no need to issue notice of hearing for 15.01.2019 by the AO because this order has already been pronounced in the Open Court in the presence of both the parties.

7. In the result, appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced on 22.11.2018.

**Sd/-**  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 22/11/2018

*\*Kavita*

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	22.11.2018
2.	Draft placed before author	22.11.2018
3.	Draft proposed & placed before the second member	
4.	Draft discussed/approved by Second Member.	
5.	Approved Draft comes to the Sr.PS/PS	22.11.2018
6.	Order Pronounced and Uploaded	22.11.2018
7.	File sent to the Bench Clerk	22.11.2018
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.	