

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 429/Del/2019
Assessment Year 2015-16

Rakesh Chharia & Sons HUF R-13/9 Raj Nagar GHAZIABAD	Vs.	ITO Ward-2(2) Ghaziabad
(Appellant)		(Respondent)

ITA No.:-431/Del/2014
Assessment Year: 2011-12

Deepa Chharia, R-13/9 Raj Nagar GHAZIABAD	Vs.	DCIT, Circle – 1 Ghaziabad
(Appellant)		(Respondent)

ITA No.:-431/Del/2014
Assessment Year: 2011-12

Vidur Chhria R-13/9 Raj Nagar GHAZIABAD	Vs.	ACIT, Circle-2 Ghaziabad
(Appellant)		(Respondent)

Assessee by:	Shri Akhilesh Kumar, Advocate
Department by :	Shri Surender Pal, Sr. DR
Date of Hearing	27/02/2018
Date of pronouncement	27 /02/2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeals have been filed by the assessee against the separate impugned order of even date, 28.2.2019, passed by Ld. CIT (Appeals) -1, Noida for the quantum of assessment u/s 143 (3) for the assessment year 2015-16. In all the appeals the assessee is mainly aggrieved by the impugned order on the ground that Ld. CIT(A) has dismissed the appeal of the assessee *ex parte* and also given a wrong finding of fact that assessee has not filed necessary appeal fee in terms of section 249 (1)(a).

2. Here in this case AO has made assessment vide order dated 27.12.2017, making additions u/s 68 and 69C. Against the said assessment order assessee has filed the appeal before the Ld. CIT (A) on 18.1.2018 through E filing. Ld. CIT (A) in his order has noted that Form No. 35 as available on the website of the Department does not contain demand notice and the challan for fee u/s 249(1)(a). Thus, on this premise he has dismissed the appeal as not maintainable. Moreover, assessee on the date fixed for hearing had sought adjournment which too has been rejected.

3. Before us, Ld. Counsel submitted that here in this case the observations and the findings of the Ld. CIT (A) that assessee has not filed any challan alongwith appeal memo is absolutely wrong, which is evident from the tax challan of deposit of Rs. 1000/- towards appeal fee on 18.1.2018; and in support he has also filed the counterfoil of such deposit. He has also filed the acknowledgment challan from the Department's website, wherein all the attachments uploaded have been mentioned. Thus, it is erroneous on the part of the Ld. CIT (A) to hold that challan was not deposited.

3. On the other hand, Ld. DR submitted that matter can be restored to the file of the Ld. CIT (A) for fresh adjudication.

4. After considering the aforesaid submissions and the facts brought on record before us, we find that assessee along with Form 35 has filed various documents including challan which is evident from the taxpayers counterfoil which was deposited on 18.1.20108, i.e., on the date fixed on the date of filing of appeal in Form No. 35 of the Ld. CIT (A). Downloaded documents from the website of the department clearly show the documents attachment as under:-

1. Order appealed against
2. Notice of demand
3. Misc. Attachment

5. Thus, the observation and the finding of the Ld. CIT (A) that no demand notice and challan has been deposited is not correct and for this reason he has dismissed the assessee's appeal. Since appeal has been decided *ex parte* without considering merits on additions, therefore, in the interest of substantial justice, we are remanding back all the appeals back to the file of the Ld. CIT(A) to be decided afresh in accordance with law after giving due opportunity to the assessee .

6. In the result appeals of assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 27th February, 2019.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Dated: 27/02/2019

Veena

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi