

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.4064/Del./2016  
Assessment Year 2011-2012

B.K. Resorts B-209, Sector – Gama -1, Greater Noida, U.P. PIN 201 308. PAN AAJFB8520H	vs	Commissioner of Income Tax (Appeals)-1, Noida.
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri P.V. Gupta, Sr. D.R.

Date of Hearing :	23.04.2019
Date of Pronouncement :	23.04.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-1, Noida, Dated 29<sup>th</sup> February, 2016, for the A.Y. 2011-2012.

2. Briefly the facts of the case are that the Ld. CIT(A) in the impugned order has noted that the assessee has filed the appeal against the assessment order dated 28.03.2015

passed under section 153C/143(3) of the I.T. Act, 1961, for the A.Y. 2011-2012 on total income of Rs.20.97 crores against the returned loss. The Ld. CIT(A) also noted that the appeal in this case was filed on 20.05.2015. The assessee, however, has moved a petition for stay of demand as the A.O. has rejected request of the assessee for stay of demand. When matter was fixed before Ld. CIT(A), none appeared on behalf of the assessee. Ld. CIT(A) noted that stay of demand during the pendency of main appeal is discretionary jurisdiction. The Ld. CIT(A) in the absence of the assessee declined to stay the demand and dismissed the petition on merit.

3. The assessee in the Form-36 in Column No.12 has prayed that the outstanding demand of Rs.6.39 crores may be stayed. The statement of fact filed by the assessee and ground of appeal similarly suggest that Ld. CIT(A) passed the Order without giving opportunity to the assessee and that the demand should have been stayed.

4. The assessee has been notified the date of hearing, however, none appeared on behalf of the assessee at the time of hearing of the appeal.

5. The Ld. D.R. submitted that since Ld. CIT(A) refused to stay the outstanding demand at the appellate stage, therefore, such order is not appealable before the Tribunal.

6. After considering the facts of the case in the light of submissions of the Ld. D.R, we are of the view that the appeal of assessee is not maintainable. It appears from the Order of the Ld. CIT(A) that he has declined to stay the outstanding demand during the pendency of the appeal. Though it is mentioned in the Order that it is passed under section 250 of the I.T. Act, but, it could not be considered as an Order passed under section 250 of the I.T. Act because under section 250 of the I.T. Act, the Commissioner (Appeals) could decide the appeal of assessee. This Section provides the procedure in appeals before the Ld. CIT(A). Since the Order passing on the stay application at First Appellate Stage is not appealable before the Tribunal,

therefore, the Ld. D.R. rightly contended that appeal of assessee is not maintainable. We, accordingly, dismiss the appeal of assessee.

7. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

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

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 23<sup>rd</sup> April, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.