

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'I(2) + SMC' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER,  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No. 1790/DEL/2019 ( A.Y 2009-10)**

Vinay Pal 206-207, Ansal Satyam, RDC, Ghaziabad, Uttar Pradesh PIN: 201002 PAN: ALCPP2744D <b>(APPELLANT)</b>	Vs	ITO Ward-2(5) Noida, Uttar Pradesh PIN: 201001 <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Dinesh Malhotra, Adv</b>
<b>Respondent by</b>	<b>Sh. Jagdish Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>24.02.2020</b>
<b>Date of Pronouncement</b>	<b>26.02.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 28/09/2018, passed by CIT(A)-1, Noida, Uttar Pradesh for Assessment Year 2009-10.

2. The grounds of appeal are as under:-

“1. Because, Id. CIT (Appeals) grossly erred in law and on the facts and circumstances of the case in dismissing the appeal in ex-party without providing any proper opportunity of being heard in as much only adjournment rejected behind the back of assessee and ex-party order sent to assessee after more than 3 months.

2. Because, Id. CIT (Appeals) is totally wrong in holding that, assessee has not paid appeal fee in terms of s.249(l)(a) and hence is same is not

*maintainable and not admitted, while appeal fee is duly paid on 25.01.2017 and which is still on the site of deptt., hence order is inherently illegal.*

*3. Because, Id. CIT(A) further erred in commenting adversely on the grounds and rejecting the same unilaterally without any opportunity/enquiry etc. even after not admitting the appeal.*

*4. Therefore, it is very respectfully prayed that this court may kindly be pleased to set aside the order under question with the direction deemed fit to CIT(A) to hear matter on merits.”*

3. The assessee sold a plot of land situated at Noida during the Assessment Year 2009-10 for Rs. 47,00,000/-. The sale proceeds was utilized in purchasing a residential house by the assessee. The assessee filed income tax return for the Assessment Year 2009-10 on 25/3/2010, but did not disclose the sale of property assuming that since the transaction is exempt from tax u/s 54 of the Income Tax Act, 1961. The Assessing Officer made addition of Rs.35,22,888/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the CIT(A) has not given the appropriate opportunity of hearing to the assessee to represent his case and the documents/evidence which was submitted before the Assessing Officer was not at all taken into account by Assessing Officer as well as by the CIT(A). The Ld. AR further submitted that the CIT(A) simply observed that if the assessee does not claim for exemption u/s 54, the Assessing Officer /Revenue is not bound to grant the same.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has not given any categorically finding on merit of the case and also did not give sufficient opportunity of hearing to the assessee. Therefore, the CIT(A) was not right in dismissing the appeal of the assessee without giving proper opportunity of hearing. Hence, we are remanding back the entire issue to the file of the CIT(A) to be decided on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal of the assessee is partly allowed for statistical purpose.

8. In result, the appeal filed by the assessee is partly allowed for statistical purpose.

**Order pronounced in the Open Court on 26<sup>th</sup> FEBRUARY, 2020.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 26/02/2020  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	24.02.2020
Date on which the typed draft is placed before the dictating Member	25.02.2020
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	26.02.2020
Date on which the final order is uploaded on the website of ITAT	26.02.2020
Date on which the file goes to the Bench Clerk	26.02.2020
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	