

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.5401/Del/2018
Assessment Year : 2011-12**

Mary Kay Cosmetics Pvt. Ltd., 837 & 838, Sector-38, Opposite JUDA Market, Gurgaon, Haryana – 122101 (PAN: AAECM9208M)	DCIT, Circle-16(1), New Delhi.
(Appellant)	(Respondent)

Appellant by : Shri K.M. Gupta,, Advocate
Mr. Rishabh Malhotra, AR
Respondent by : Shri Saras Kumar, Sr. DR

ORDER

PER SUDHANSHU SRIVASTAVA, JM

This appeal has been preferred by the assessee against the order of the learned Commissioner of Income Tax(A)-38, Delhi dated 16.3.2017 and pertains to assessment year 2011-12.

2. At the outset, the learned AR submitted that the learned Commissioner of Income Tax(A) has dismissed the assessee's appeal *in limine* by making an observation that the assessee has not paid the requisite appeal fee and the

Challan thereof is not there in the papers filed by the assessee pertaining to the appeal before him. It was submitted that this observation of the ld. Commissioner of Income Tax(A) is factually incorrect as the Challan had been deposited and the same was filed along with the appeal papers. He also drew our attention to the copy of the Challan placed in the Paper Book and submitted that since the learned Commissioner of Income Tax(A) has not decided the assessee's appeal on merits, he should be so directed. It was also mentioned by the learned AR that the assessee was considering filing an application under Vivad Se Vishwas Scheme.

3. Per contra, the learned Senior DR had no objection to the file being restored to the office of the learned Commissioner of Income Tax(A) for adjudication on merits.

4. Having heard both the parties and considering that the learned Commissioner of Income Tax(A) has not adjudicated the assessee's appeal on merits and has dismissed it only on an incorrect observation that the assessee has not deposited the requisite appeal fee, we deem it expedient to restore the file to the office of the learned Commissioner of Income Tax(A) with the direction to adjudicate it on merits, after giving proper opportunity to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 3rd July, 2020.

Sd/-

(G.S. PANNU)
VICE PRESIDENT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 3rd JULY 2020
'GS'

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

Assistant Registrar