

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'FRIDAY-A' NEW DLEHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARSIMHA CHARY, JUDICIAL MEMBER**

[THROUGH VIDEO CONFERENCING]

**ITA.No.1361/Del/2020
Assessment Year: 2016-17
and
S.A. No.267/Del/2020
Assessment Year 2016-17**

**Viveik Mohan Saigal,
C/o-Ankur Geol, Advocate,
1268, Sector-37,
Nodia-201301
PAN-CSMPS0274G
Appellant**

**Vs. ITO (International Taxation),
HSIIDC Building, Vanijya Nikunj,
Udhyog Vihar, Phase-V,
Gurgaon, Haryana-122001**

Respondent

**Appellant by : Sh. Ankur Goel, Advocate
Respondent by : Sh. R.K. Gupta, Sr. DR
Date of hearing : 24/07/2020
Date of order : 24/07/2020**

ORDER

PER K. NARSIMHA CHARY, J.M.

The appeal is filed challenging the order dated 24/02/2020 in appeal no.10145/2018-19 passed by Ld. Commissioner of Income Tax

(Appeals)-43, (in short Ld. CIT(A)), New Delhi, for the Assessment Year 2016-17 in the case of Shri Viveik Mohan Saigal, and pending disposal of the appeal assessee seeks stay of demand in Stay Application No.267/Del/2020.

2. It is submitted by the Ld. Authorized Representative (in short Ld. AR) that in the peculiar facts and circumstances of the case, more particularly in view of the fact that the order under appeal is an ex-parte order without affording opportunity to the assessee and also that the assessee has evidence in his favour to be considered to reach the just tax liability, it would be just convenient to dispose of the appeal itself at this stage.

3. Ld. DR reports no objection to proceed with the appeal. Recording the same, we heard the matter on merits.

4. It remains an admitted fact that though the Ld. CIT(A) extracted the statement of facts as submitted by the assessee, he noted in the impugned order that in spite of several opportunities, the assessee failed to furnish any evidence to substantiate his claim for deduction under section 54EC of the Income Tax Act, 1961 (in short the Act) and therefore, he drew an inference that the assessee was not interested in pursue the appeal and does not have any submissions to substantiate his claim. On this premise, the Ld. CIT(A) dismissed the appeal *in limine* without referring to the merits of the contention of the assessee in the light of the assessment order.

5. When the assessee does not avail the opportunity granted to him to furnish the evidence to substantiate his claim in respect of deduction

under section 54EC of the Act whereas the Assessing Officer had treated the same as Short Term Capital Gain (in short STCG), it is not incumbent on the appellate authority to wait for a time till the assessee chooses to enter appearance and proceeds with the matter. The appellate authority no doubt can proceed to dispose of the matter ex-parte, however, but not *in limine*, but only on merits. Nothing prevented the Ld. CIT(A) in this matter to appreciate the contentions raised by the assessee in his statement on facts by referring to the merits and demerits of the assessment order.

6. For want of reasons, the first appellate order is incapable of rendering any assistance to us to appreciate the legality or otherwise thereof. We are unable to uphold the conclusions drawn by the First Appellate Authority in dismissing the appeal for non discussion of the case on merits.

7. Further, now it is submitted on behalf of the assessee that the assessee is ready with all their evidences to substantiate their claim for deduction under section 54EC of the Act and given an opportunity they are ready to place on record and to get the matter disposed of on merits. In these circumstances, we are of the considered opinion that it is fit case to set-aside the impugned order and remand the matter to the file of the Ld. CIT(A) for disposing it on merits. Needless to say that an opportunity would be granted to the assessee and submitted the evidence and to be verified their contentions. We ordered accordingly.

8. In the result, appeal of the assessee is allowed for statistical purpose and the Stay Petition is dismissed as infructuous.

Order pronounced in open court on this 24th of July 2020.

Sd/-

**(G.S.PANNU)
VICE PRESIDENT**

Sd/-

**(K. NARSIMHA CHARY)
JUDICIAL MEMBER**

Dated: 24/07/2020

Shekhar, Sr. P.S.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI