

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. N.K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.1232/Del/2020  
Assessment Year: 2009-10

<b>ITO Ward-3(2) Noida</b>	<b>Vs</b>	<b>Rupesh Gupta, G-15A, Sector-22, Noida -201301 PAN No.ADZPG6526B</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

<b>Appellant</b>	Sh. Sanjai Kumar Yadav, Addl. CIT Ms. Niharika Kucchal, Advocate on behalf of standing Counsel Shri Zoheb Hussain
<b>Respondent</b>	Sh. Milind Garg, Advocate Sh. Yaksh Garg, Advocate

Date of hearing:	10/11/2022
Date of Pronouncement:	10/11/2022

**ORDER**

**PER N.K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-1, Noida dated 28.12.2018 pertaining to A.Y.2009-10.

2. The sum and substance of the grievance of the revenue is that there is a jurisdictional defect in as much as the order was passed by the CIT(A)-1, Noida after he was retired.

3. It is surprising to see that the revenue itself is questioning the jurisdiction of its own CIT(A) which allegation cannot be brushed aside lightly.

4. Since the appeal has been allowed by the first appellate authority, therefore, the assessee would not have approached this Tribunal challenging the jurisdiction of the appellate authority. However, since the revenue has filed the appeal challenging the very jurisdiction of the CIT(A), therefore, without going into the merits of the case we deem it fit to restore the impugned appeal back to the files of the CIT(A) having proper jurisdiction over the assessee. In the interest of justice and fair play the appeal is restored back to the files of the CIT(A) to be decided afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

5. In the result, the appeal of the revenue is allowed for statistical purpose.

6. Decision announced in the open court on 10.11.2022.

Sd/-

**(KUL BHARAT)**

**JUDICIAL MEMBER**

\*NEHA, Sr. Private Secretary\*

Date:- 11.11.2022

Copy forwarded to:

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

Sd/-

**(N. K. BILLAIYA)**

**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI