

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'F' NEW DELHI ]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 5491/DEL/2019 (A.Y. 2015-16)**

ITO Ward-2(2) Ghaziabad Uttar Pradesh <b>( APPELLANT )</b>	Vs.	Rajeshwari, H-31, Patel Nagar-3, Ghaziabad, Uttar Pradesh <b>PAN: AAFPW7754C</b> <b>( RESPONDENT )</b>
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<b>Assessee by :</b>	<b>None</b>
<b>Department by:</b>	<b>Sh. Sanjeev Menon, Jr. Standing Counsel for Mr. Zoheb Hossain, Sr. Standing Counsel</b>

<b>Date of Hearing</b>	<b>14.06.2023</b>
<b>Date of Pronouncement</b>	<b>16.06.2023</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Revenue against the order dated 30/01/2019 passed by the Office of the Commissioner of Income Tax (Appeals)-2, Noida, (hereinafter referred to 'CIT(A)' for assessment year 2015-16.

2. The assessee has raised the following Concise grounds of appeal:-

*“1. 1. Ld. CIT(A)-2, Noida has erred in law and facts by deciding the appeal of the assessee without having jurisdiction over the case as the assessee in this case filed the appeal with the CIT (A)-1, Noida whereas the same should have been filed with the jurisdictional CIT(A), Ghaziabad ( copy of jurisdiction order enclosed). Therefore, order of Ld. CIT(A)-2, Noida is non-est, illegal, bad in law and liable to be quashed/cancelled.*

*2. The Ld. CIT(A)-2, Noida has erred in law and facts in deleting the addition of Rs. 26,22,326/- on account of unexplained investment u/s 68 of the IT Act without considering the facts brought on record. Reliance is placed on judgment of Hon'ble Delhi High Court in the case of Udit Kalra vs ITO, Ward-50(1) in ITA No.220/2019 & CM No. 10774/2019 dated 08.03.2019 and of Hon'ble Bombay High Court in Sanjay Bimal Chand Jain vs. Pr. CIT-1, Nagpur [2018] 89 Taxmann.com 196(Bombay).*

3. None appeared for the Assessee and no adjournment application moved, considering the issue involved in the Appeal, we deem it fit to hear the Ld. DR and decide the matter.

4. Brief facts of the case are that, the assessment order came to be passed on 27/12/2017 u/s 143(3) of the Act by computing the income of the assessee at Rs. 36,75,560/-/- as against declared income of Rs. 9,74,560/-. Aggrieved by the assessment order dated 27/12/2017, the assessee preferred an appeal before the CIT(A)- Noida, though the Jurisdictional CIT(A) was Ghaziabad. The said appeal filed by the assessee has been taken up by the Commissioner

of Income Tax (Appeals-2, Noida) and vide order dated 30/01/2019 the CIT(A) allowed the Appeal filed by the assessee by deleting the additions made by the A.O.

5. Aggrieved by the order impugned dated 30/01/2019 the Department preferred the present Appeal on the grounds mentioned above.

6. The Ld. DR submitted that the CIT(A) -2 Noida erred in deciding the Appeal of the assessee without having jurisdiction as the assessee had filed the Appeal with CIT(A)- Noida whereas the Appeal should have been filed before jurisdictional CIT(A)- Ghaziabad. Further brought to our notice that the Officer who passed the order had no jurisdiction to adjudicate the Appeal filed by the assessee, therefore submitted that the Appeal requires to be adjudicated by the proper authority who is having the jurisdiction. Thus, sought for remanding the matter to the file of CIT (A)-Ghaziabad.

7. We have heard the Ld. DR and perused the material available on record. It is not in dispute that the assessment order has been passed by the ITO, Ward-2 (2), Ghaziabad, UP. Any order passed by the Assessing Officer Ward-2 (2), Ghaziabad, UP is subject to Appeal before the Jurisdictional CIT(A) i.e. CIT(A)- Ghaziabad. Since the present appeal has been decided and allowed by the CIT(A)- Noida, which is beyond the jurisdiction of the Officer who has passed the order, without expressing any view on the merit of the case, we are of the opinion that the order impugned dated 30/01/2019 passed by the Commissioner of Income Tax-Appeals, Noida is liable to be set aside and the

matter is deserves to be remanded to the file of CIT(A), Ghaziazbad to decide the Appeal filed by the assessee afresh in accordance with law after providing opportunity of being heard to the assessee. Ordered Accordingly.

8. In the result, the Appeal filed by the Revenue is allowed for statistical purpose.

Order pronounced in the open court on : **16/06/2023**.

**Sd/-**  
**( Dr. B. R. R. KUMAR )**  
**ACCOUNTANT MEMBER**  
Dated : 16 /06/2023  
*\*R.N, Sr. PS\**

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Copy forwarded to :-

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

ASSISTANT REGISTRAR  
ITAT New Delhi

