

**INCOME TAX APPELLATE TRIBUNAL**  
**[ DELHI BENCH "E": NEW DELHI ]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER**  
**AND**  
**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
**(Through Video Conferencing)**

ITA No. 1009 & 1010/Del/2017  
(Assessment Years: 2008-09 and 2011-12)

Mr. Kimiyoshi Muto, Co. Rajesh Mahna & Co. G-67, Masjid Moth, Greater Kailash-II, New Delhi – 110 048. <b>PAN : APJPM0791A</b>	Vs.	DCIT,  Circle-70(1),  New Delhi.
(Appellant)		(Respondent)

**AND**

ITA No. 1011/Del/2017  
(Assessment Year: 2011-12)

Mr. Kosuke Kataoka, Co. Rajesh Mahna & Co. G-67, Masjid Moth, Greater Kailash-II, New Delhi – 110 048. <b>PAN : BITPK3852L</b>	Vs.	DCIT,  Circle-70(1),  New Delhi.
(Appellant)		(Respondent)

Revenue by :	Shri Rajesh Mahna, Advocate.
Assessee by:	Shri Ramesh Kumar, Sr. D.R.
Date of Hearing	20/04/2021
Date of pronouncement	09/06/2021

**ORDER**

**PER PRASHANT MAHARISHI, A.M. :**

**ITA. No. 1009 (Del) of 2017 :**

1. This appeal is filed by assessee through his representative against the order of Commissioner of Income Tax (Appeals)-21, New Delhi, for assessment year 2008-09 wherein appeal of the assessee filed against the order of the Dy. Commissioner of Income Tax, Circle 70 (1), New Delhi, passed under

Section 148 read with Section 144 of the Income Tax Act, 1961 (the Act) dated 11<sup>th</sup> March, 2015 was dismissed.

2. The grounds of appeal of the assessee shows that the assessment has been made without proper service of the notice as well as the impugned addition made is not sustainable.
3. Briefly stated the facts of the case are that assessee is an expatriate employee in India working as Managing Director in an Indian company Hakuhodo Percept Pvt. Ltd. The assessee filed his return of income on 29.07.2008 at Rs.1,04,65,703/-. The case of the assessee was re-opened under Section 147 of the Act on the ground that the assessee has shown perquisite under rent-free accommodation by considering only the Indian salary whereas, according to the Assessing Officer, he was required to compute perquisite value of rent-free accommodation by including foreign salary also.
4. Notice was issued on 19<sup>th</sup> March, 2014. In view of non-appearance by the assessee, Assessing Officer issued a show cause notice, but no response was received and, therefore, the Assessing Officer computed the value of rent-free accommodation at Rs.11,16,246/- and passed the assessment order on 11<sup>th</sup> March, 2015 assessing income of the assessee at Rs.1,15,81,949/- against returned income of Rs.1,04,65,703/-.
5. Assessee filed appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) noted that he has issued three notices for hearing. However, all of them received back un-delivered with Postal remark "Left". Therefore, in the light of repeated non co-operation of the appellant he held that assessee is a habitual defaulter, which is not acceptable. He further held that appellant is not serious about pursuing this appeal. He further held that even on the merit as no new facts were pointed out, he upheld the order of the Assessing Officer.
6. We have heard the rival contentions on this issue. Clearly, facts that emerge are that assessee is an individual, resident at that particular time, employed by an Indian company. After those years when the Id. CIT (Appeals) issued the notices, it was apparent that the assessee has already left the premises. This is also evident from the postal remark. The Id. CIT (Appeals) also dismissed the appeal of the assessee more on the aspect of non-prosecution.

He did not adjudicate that whether for computing the perquisite of rent-free accommodation, only Salary paid by Indian employer is to be considered or the salary paid by foreign employer is also to be added thereto. Thus, he dismissed appeal of assessee only for non-prosecution in substance, which is not permitted. Therefore, there has to be the decision on merits by the Id CIT (A). Naturally, assessee did not have any notice of hearing as the assessee has left the premises. No doubt, it is the duty of the assessee to intimate a change in address, but that does not give power to appellate authority to dismiss appeal of assessee for non-prosecution. Therefore, apparently now assessee needs to be heard. The Id. AR now has categorically stated that the legal representative of the assessee, mentioned in column No. 10 of Form No. 36, would appear on the appointed time to represent the case of the assessee. Even otherwise the Id. CIT (Appeals) should have decided the issue on the merits whether the Indian salary and foreign salary both are required to be considered for computing the perquisite of rent-free accommodation provided to the assessee. Therefore, in the interest of justice, we set aside this appeal back to the file of the Id. CIT (Appeals) with a direction to the assessee through his legal representative appearing before us to appear before the Id. CIT (Appeals) and submit all the relevant contentions before him in the manner provided under the Act within 60 days from the date of this order. The Id CIT (A) then issue notice of hearing to assessee in accordance with law and then decide the issue on merits. In view of this, we set aside this appeal back to the file of the Id. CIT (Appeals) for deciding the issue on the merits of the case.

**ITA. No. 1010 (Del) of 2017 :**

7. ITA. 1010 (Del) of 2017 in the case of the same assessee is for assessment year 2011-12 and is also having the identical facts. Therefore, this appeal is also set aside to the file of the Ld. CIT (Appeals) with similar direction to the assessee and the Ld. CIT (Appeals) to decide the issue on the merits of the case.

**ITA. No. 1011 (Del) of 2017 :**

8. ITA. 1011 (Del) of 2017 in the case of Mr. Kosuke Kataoka for assessment year 2011-12 also have the similar facts and, therefore, same is also remitted back / set aside to the file of the Id. CIT (Appeals) with direction to the assessee to submit the relevant details and then CIT (Appeals) may decide it on merits.
9. Accordingly, all the three appeals filed by the assesseees are allowed for statistical purposes.

Order pronounced in the open court on 09/06/2021.

**Sd/-  
( AMIT SHUKLA )  
JUDICIAL MEMBER**

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

Dated : 09/06/2021

\*MEHTA\*

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	09.06.2021
Date on which the typed draft is placed before the dictating member	09.06.2021
Date on which the typed draft is placed before the other member	09.06.2021

Date on which the approved draft comes to the Sr. PS/ PS	09.06.2021
Date on which the fair order is placed before the dictating member for pronouncement	09.06.2021
Date on which the fair order comes back to the Sr. PS/ PS	09.06.2021
Date on which the final order is uploaded on the website of ITAT	09.06.2021
date on which the file goes to the Bench Clerk	09.06.2021
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	