

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6468/Del./2019
Assessment Year 2015-16

Srishti Resident Welfare Association T-6/803, Prasvanath Prestige-II, Plot No. 2, Sector-93-A, Noida, Uttar Pradesh. PAN No. AAEAS2644D	vs.	ACIT Circle-3, Noida.
(Appellant)		(Respondent)

For Assessee :	Shri K. Prasanna, Adv.
For Revenue :	Shri Prakash Dubey, Sr. DR

Date of Hearing :	05.01.2021
Date of Pronouncement :	05.01.2021

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-1, Noida dated 31.12.2018 for AY 2015-16.

2. I have heard Ld. Representatives of both the parties and perused the orders of authorities below.

3. In this case, AO passed the assessment order dated 03.10.2017 u/s 143(3) of the I.T. Act. It was challenged before Ld. CIT(A). Ld. CIT(A) noted that only Form No. 35 is available

on official website of the Department which have been downloaded. It is noted that impugned assessment order, copy of the demand notice and challan of fee deposited for filing appeal are not available. Several notices were issued to the assessee but none have been served upon the assessee. As the postal authorities returned envelope with the remarks “no such person is available at the given address”. The Ld. CIT(A) in absence of assessee considered the issue in detail and ultimately in para 108 found that impugned assessment order is defective in law and has to be annulled on merits and to protect the interest of the Revenue direction was issued to the AO u/s 150 of the IT Act to reopen the assessment and passed the order accordingly. The Ld. CIT(A), however, in para 111 has confirmed the impugned assessment order and dismissed the appeal of assessee.

4. After considering the rival submissions, I am of the view that the matter requires reconsideration at the level of the Ld. CIT(A).

5. Ld. Counsel for assessee rightly contended that no notice has been served upon the assessee. Therefore, order has been passed without providing opportunity of hearing to the assessee. Ld. Counsel for assessee further pointed out that in para 108 Ld. CIT(A) annulled the assessment order and directed the AO to reopen the assessment as per law but at the end of the impugned order confirm the assessment order and

dismiss the appeal of the assessee. Thus, the appellate order is passed without giving opportunity of being heard to the assessee and the Ld. CIT(A) also passed contradictory appellate order. Such order cannot be sustained in law.

6. I, accordingly, set aside the impugned appellate order and restore the appeal of assessee to the file of Ld. CIT(A)-Noida with direction to re-decide the appeal of the assessee in accordance with law by giving reasonable sufficient opportunity of being heard to the assessee.

7. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open Court on 05.01.2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 05.01.2021

*Kavita Arora

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.