

## IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
ANDSHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(THROUGH VIDEO CONFERENCE)

ITA NO. 1395/DEL/2015

A.Y. : 2005-06

SMT. SHANTI DEVI MERWAH, A-26, FIRST FLOOR, KIRTI NAGAR, NEW DELHI - 110 015 (PAN: AAJPD8788R)	Vs.	ACIT, CENTRAL CIRCLE-7, NEW DELHI
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	NONE
Department by	Sh. H.K. Choudhary, CIT(DR)

**ORDER****PER H.S. SIDHU, JM:**

This appeal filed by the Assessee is directed against the impugned order dated 16.02.2015 passed by the Ld. CIT(A)-24, New Delhi in relation to assessment year 2005-06 on the following grounds:-

1. The Assessing Officer had passed an order u/s. 143(3)/147 dated 28.3.2013 raising a demand of Rs. 19,60,796/- on the assessee for ASSESSMENT

YEAR 2005-06 without serving any valid notice u/s. 148 on the assessee. Further, on filing the appeal against such order by the assessee, the Ld. CIT(A)-XXXI erred in rejecting the appeal on the ground that the assessee has not paid the tax demand, without considering the fact that there was no valid Notice served on the assessee for carrying out the assessment consequent to which the assessment proceedings are void ab initio.

2. It is prayed that the demand wrongfully raised on the assessee in the absence of serving any valid notice before 31.3.2012 must be deleted as the assessment proceedings have been unlawful and void ab initio.
3. The assessee reserves the right to add further explanations with facts and add more grounds of appeal.

2. The aforesaid appeal came for hearing before the Bench on 12.07.2018, but due to non-appearance of the assessee, the Bench dismissed the appeal of the assessee for non-

prosecution on 12.07.2018. Later, on the misc. application filed by the assessee for recalling the order dated 12.07.2018, the Bench recalled the order dated 12.07.2018 vide its order dated 12.03.2020. In compliance of the order dated 12.03.2020, the Registry fixed the appeal of the assessee before the Bench on 06.05.2020; 17.6.2020; 26.08.2020 and lastly on 04.11.2020, but assessee did not appear. Keeping in view the facts and circumstances of the present case and the issues in dispute, we are of the view that no useful purpose would be served to adjourn the case again and again, hence we are deciding this appeal after hearing the Ld. CIT(DR).

3. Assessee filed the present appeal against the impugned order dated 16.02.2015 by making the averments as stated in the grounds of appeal as reproduced above. After hearing the Ld. CIT(DR) and going through the averments made in the grounds of appeal, we are of the view that Ld. First Appellate Authority has rightly dismissed the appeal filed by the Assessee for non-compliance of the provision of section 249(4) of the Income Tax Act, 1961. We are of the view that in view of the provisions of section 249(4) of Income Tax Act, 1961, no appeal can be admitted if the tax due on the returned income has not been paid at the time of filing the appeal. The reasons mentioned by the Assessee for non-payment of admitted tax is also not genuine, therefore, we are fully agree with the reasons mentioned by the Ld. First Appellate Authority for dismissing the appeal of the assessee as not admitted. But keeping in view of the facts and circumstances of the present case and the

present situation and taking a lenient view as well as in the interest of justice, we are sending back the matter in dispute to the Ld. First Appellate Authority to decide the same, afresh as per law, if the assessee made the payment of admitted tax as per the provision of section 249(4) of the Income Tax Act, 1961 on or before 31.03.2021. With this directions, the present appeal of the assessee is disposed of and allowed for statistical purposes. Registry is directed to send the copy of this order to both the parties by Registered Post AD.

4. In the result, the Assessee's Appeal is disposed of and allowed for statistical purposes.

The decision is pronounced on 10.11.2020.

SD/-  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**  
"SRB"

SD/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi