



ITA No 6915 to 6917/Mum/2016

Axcel Global Services

Assessment Years- 2009-10, 2011-12, 2012-13

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
**BEFORE SHRI D.T. GARASIA, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 6915 to 6917/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2009-10, 2011-12 & 2012-13)

<b>Axcel Global Services</b> Prabha Palace Behind Laxmi Bhavan Lajpatrai Road Vile Parle(W) Mumbai – 400 056	<b>बनाम/</b> Vs.	<b>Income Tax Officer</b> Aaykar Bhavan, M.K.Marg New Marine Lines Mumbai- 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAOFA-1550-D</b>		
(आपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Bharat Kamdar / Chintan Kamdar, Ld. ARs
<b>Revenue by</b>	:	Suman Kumar, Ld. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	15/09/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04 /10/2017

**आदेश / ORDER**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. These are three appeals by Assessee for Assessment Years [AY] 2009-10, 2011-12 & 2012-13 and assail separate orders of Ld. First



Appellate Authority. Since, common issues are involved, we dispose-off the same by way of this common order for the sake of convenience & brevity. First we take up ITA No. 6917/Mum/2016 for AY 2009-10 where the assessee is aggrieved by the order of Ld. Commissioner of Income Tax (Appeals)-28 [CIT(A)], Mumbai dated 04/10/2016 confirming quantum assessment order passed u/s 143(3) *read with Section 263* of the Income Tax Act, 1961 dated 10/02/2015.

2. The respective representatives, at the outset, drew our attention to the fact that quantum assessment order is passed u/s 143(3) *read with Section 263* and the assessee has successfully contested the invocation of revisional jurisdiction u/s 263 exercised by Ld. CIT before this Tribunal vide ITA No.2446/Mum/2014 order dated 28/02/2017 and therefore, the consequential order does not survive and hence, present appeal become *Infructuous*. A copy of the order has been placed before us. After perusing the same, we find that Section 263 order passed by Ld. CIT has been quashed by this Tribunal in the cited order and therefore, consequential order does not survive. Hence, this appeal become *infructuous* and therefore dismissed in *limine*.

3. Now we take up ITA No. 6915 & 6916/Mum/2016 for AYs 2011-12 & 2012-13 where common issue of deduction u/s 10AA is involved and the grounds of appeal are also identical. The assessee has contested the impugned order on legal grounds as well as on merits since the impugned order is an *ex-parte* order. The assessee is primarily aggrieved by denial of exemption u/s 10AA.

4. Facts as culled from AY 2011-12 are that the assessee being *resident firm* engaged in *warehousing & repair maintenance services*



was subjected to an assessment u/s 143(3) for the impugned AY on 24/03/2013 at Rs.1,42,98,260/- as against 'Nil' return filed by the assessee on 17/06/2011. The assessee claimed deduction u/s 10AA against certain income, which, in the opinion, of Ld. AO was not available to the assessee and therefore, the same was denied to the assessee. Aggrieved, the assessee contested the same without any success before Ld. CIT(A) vide impugned order dated 04/10/2016.

5. The assessee failed to appear before Ld. CIT(A) to defend his case despite being provided with several opportunities of being heard which resulted into confirmation of quantum assessment *ex-parte qua* the assessee. Aggrieved, the assessee is in further appeal before us.

6. The Ld. Representative for assessee [AR], at the outset, assailed the impugned order by contending that the assessee could not represent his case before Ld. CIT(A) and the order being an *ex-parte* order, stood vitiated on account of violation of principle of natural justice. The Ld. AR contended that the assessee stood fair chance of contesting the addition and therefore, in the interest of justice, another opportunity to contest the issues before Ld. first appellate authority may be granted to the assessee.

7. *Per contra*, the Ld. DR opposed the same by drawing our attention to the fact that the assessee was provided with sufficient opportunities of being heard on various occasions but every time adjournment was sought and no efforts were made to represent the case before first appellate authority and therefore, the appeal has rightly been decided against the assessee.



8. We have heard the rival contentions and perused the relevant material on record. We concur with the stand of Ld. DR that the assessee failed to avail the several opportunities being provided to him by Ld. CIT(A) and the assessee did not make any efforts to pursue the same. However, at the same time, it is settled law that principles of natural justice and fair play require that the effected party is granted sufficient opportunity of being heard to contest his case. Therefore, we see no harm in providing another opportunity to the assessee to contest his claim before Ld. CIT(A). Therefore, the matter is restored back to file of Ld. CIT(A) for *de-novo* adjudication with direction to assessee to substantiate his claim forthwith failing which Ld. CIT(A) shall be at liberty to decide the matter on the basis of material available on record.

9. The impugned order for AY 2012-13 is also an *ex-parte* order where the quantum order has been confirmed placing reliance on the decision in AY 2009-10. Therefore, on similar lines, the same is also restored to the file of Ld. CIT(A) with similar directions.

10. In nutshell, ITA No. 6917/Mum/2016 stands dismissed whereas ITA Nos. 6915 & 6916/Mum/2016 stands allowed for statistical purposes on legal grounds.

*Order pronounced in the open court on 04<sup>th</sup> October, 2017.*

Sd/-

**(D.T. Garasia)**

न्यायिक सदस्य / **Judicial Member**

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04 .10.2017  
 Sr.PS:- Thirumalesh



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**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**