

आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ “जी”, दिल्ली में
**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ‘G’, NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री आर.के. पांडा, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER

&

SHRI R.K. PANDA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 3762/Del/2017

निर्धारण वर्ष / Assessment Year: 2012-13

Sudesh Yadav,

Akhilesh Kumar, Advocate

.....अपीलार्थी / Appellant

Chamber No. 206-207, Ansal

“Satyam”, RDC Raj Nagar,

Ghaziabad

PAN-ACPPY2991P

vs

ITO, Ward-2(3)

Ghaziabad

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by :Sh. Akhilesh Kumar &

Sh. Dinesh Malhotra, Advs

प्रत्यर्थी की ओर से / Respondent by :Sh. Saras Kumar, Sr. DR

DELHI BENCH ‘B’, NEW DELHI

आयकर अपील सं. / ITA No. 4749/Del/2017

निर्धारण वर्ष / Assessment Year: 2012-13

Sh. Devinder Singh Chawla,

.....अपीलार्थी / Appellant

R-2/9, Rajnagar, Ghaziabad

PAN-ACTPC8576C

vs

Dy. CIT, Circle-1,

Ghaziabad

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr. DR

DELHI BENCH ‘G’, NEW DELHI

आयकर अपील सं. / ITA No. 3766/Del/2017
निर्धारण वर्ष / Assessment Year: 2012-13

Vijay Kumar Ghelani,
4023, Naya Bazar, Delhiअपीलार्थी / Appellant
PAN-AAGPG5572K

vs

ITO, Ward-47(1),
New Delhi प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Sh. Saras Kumar, Sr. DR

DELHI BENCH 'F', NEW DELHI
आयकर अपील सं. / ITA No. 3783/Del/2017
निर्धारण वर्ष / Assessment Year: 2014-15

Smt. Priti Bajaj,
H. No. 39, Sector-15A,अपीलार्थी / Appellant
Noida, Gauta Budh Nagar,
Uttar Pradesh
PAN-ACTPB5683M

vs

ITO, Ward-2(4),
Noida प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Sanket Chhajedi, CA

प्रत्यर्थी की ओर से / Respondent by : Sh. Saras Kumar, Sr. DR

DELHI BENCH 'SMC', NEW DELHI
आयकर अपील सं. / ITA No. 3878/Del/2017
निर्धारण वर्ष / Assessment Year: 2012-13

Society for Media and Value
Education, 375-A, Mayur Vihar-Phase-Iअपीलार्थी / Appellant
Delhi-110091
PAN-AACTS4225R

vs

ITO (E), Ward-2(2),
New Delhi

.....प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Piyush Kaushik, Adv
प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr. DR

DELHI BENCH 'E', NEW DELHI
आयकर अपील सं. / ITA No. 4077/Del/2017
निर्धारण वर्ष / Assessment Year: 2012-13

M/s Maharana Pratap Education
Centre,
117/Q/66, Sharad Nagar, Kanpur
PAN-AABTM5254H

.....अपीलार्थी / Appellant

vs

ACIT, Exemption, Circle,
Ghaziabad

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Ms. Rakhi Vimal, Sr. DR

DELHI BENCH 'E', NEW DELHI
आयकर अपील सं. / ITA No.4223/Del/2017
निर्धारण वर्ष / Assessment Year: 2012-13

Sh. Narendra Pal,
Divine Heritage 11-A,
Ground Floor, Gyan Khand-II
Indirapuram, Ghaziabad
PAN-AVQPP2801H
vs

.....अपीलार्थी / Appellant

ITO, Ward-2(5),
Respondent
Ghaziabad

.....प्रत्यर्थी /

अपीलार्थी की ओर से / Appellant by : Sh. Akhilesh Kumar, Dinesh Malhotra, Advs
प्रत्यर्थी की ओर से / Respondent by : Ms. Rakhi Vimal, Sr. DR

DELHI BENCH 'C', NEW DELHI

आयकर अपील सं. / ITA No.4294/Del/2017

निर्धारण वर्ष / Assessment Year: 2011-12

M/s Hilti India Pvt. Ltd.,

A-16, Block B-I, Mohan

.....अपीलार्थी/ Appellant

Co-operative Industrial
Estate Limited, New Delhi
PAN-AAACH3583Q

vs

DCIT, Circle-11(1),

New Delhi

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Arun Bansal, CA

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr. DR

DELHI BENCH 'C', NEW DELHI

आयकर अपील सं. / ITA No.4685/Del/2017

निर्धारण वर्ष / Assessment Year: 2013-14

Ganga Kaveri Seeds Pvt. Ltd., 110,

Indira Market Old Subzi Mandi,

.....अपीलार्थी/ Appellant

New Delhi

PAN-AAACG3220D

vs

DCIT, Circle-10(1),

New Delhi

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : None

प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr. DR

DELHI BENCH 'A', NEW DELHI

आयकर अपील सं. / ITA No.4778/Del/2017

निर्धारण वर्ष / Assessment Year: 2011-12

Smt. Asha Aggarwal,

WZ-387, Rishi Nagar,

Rani Bagh, New Delhi

PAN-AFBPA1083P

vs

ITO, Ward-41(4),

.....अपीलार्थी/ Appellant

New Delhi

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Vishal Aggarwal, FCA
प्रत्यर्थी की ओर से / Respondent by : Sh. Sanjay Kapoor, Sr. DR

DELHI BENCH 'E', NEW DELHI
आयकर अपील सं. / ITA No.4229/Del/2017
निर्धारण वर्ष / Assessment Year: 2008-09

M/s Mansi Sehkari Awas Samiti Ltd.अपीलार्थी/ Appellant
C/o LK Choudhary (Secretary), 99,
Mansi Vihar, Sector-23, Ghaziabad
PAN-AACTM8741Q

vs

DCIT, Circle-1
Ghaziabad

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by: Sh.Akhilesh Kumar, Sh. Dinesh Malhotra, Advs
प्रत्यर्थी की ओर से / Respondent by : Ms. Rakhi Vimal, Sr. DR

DELHI BENCH 'B', NEW DELHI
आयकर अपील सं. / ITA No.4072/Del/2017
निर्धारण वर्ष / Assessment Year: 2012-13

M/s Dugdh Utpadak Sahkari
Sangh Ltd.,
Village-Ismila, Sarai
Chabila, Bulandshahr
PAN-AAAD0476G

vs

ACIT, Circle-Bulandshahr,
Bulandshahr

.....प्रत्यर्थी/ Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Ms. Ashima Neb, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.11.2019	घोषणा की तारीख / Date of Pronouncement: 29.11.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The present appeals are filed by different assessee against separate orders of CIT(A) relating to Assessment Years 2012-13/ 2013-14/ 2014-15 and also Assessment Years 2008-09 and 2011-12 against respective orders passed by the AO under section 143(3)/144 of the Act.

2. The present bunch of appeals have been listed for hearing and we proceed to decide the same by this consolidated order for the sake of convenience. In this bunch of appeals, the assessee is aggrieved by the order of CIT(A) for deciding the appeals *ex parte* qua the assessee and without going into the merits of the addition. In some appeals, the appeal has been decided by CIT(A) on merits but *ex parte* qua the assessee.

3. In some of the cases, there is no representation on behalf of the assessee before us but because of the issue involved, we proceed to decide the said appeals after hearing the learned DR for the Revenue.

4. It is a common case raised by different ARs for the assessee before us that the CIT(A) has passed the *ex parte* order without allowing sufficient opportunity of hearing and without going into the merits of the case. In other cases, it is pointed out that where the CIT(A) has decided the issue on merits but *ex parte* qua the assessee.

5. The learned DR for the Revenue on the other hand pointed out that sufficient opportunity has been afforded to the assessee. And in some cases, the CIT(A) has decided the issues on merits also.

6. We have heard the rival contentions and perused the record. Under the provisions of Section 250(6) of the Act, it is incumbent upon the CIT(A) to decide the appeals after hearing the parties and state the points for determination, the decision thereon and also the reasons for the decision. While deciding the appeals, CIT(A) has no power to dismiss the appeal for non prosecution by relying on the ratio/s laid down in CIT vs. B.N. Bhattacharya & Another 118 ITR 461 (SC) and Late Tukoji Rao Holker vs. CWT 223 ITR 480 (MP). In these facts and circumstances, where the CIT(A) had dismissed the appeal by applying the above said ratios, the order of the learned CIT(A) suffers from infirmity. The CIT(A) while deciding the issue on merits have also to provide reasons for coming to the conclusion and in the absence of the same, the order of the CIT(A) again suffers from infirmity. In the present bunch of appeals, we find that that the CIT(A) has dismissed the appeal *ex parte* qua the assessee and in most of the cases, had failed to decide the appeals by passing reasoned assessment order.

7. In some of the appeals, CIT(A) had decided the issue on merits but without affording reasonable opportunity of hearing to the assessee. Such order/s suffers from infirmity as it violates the principles of natural justice. In such cases also, we are of the view that reasonable opportunity

of hearing should be afforded to the assessee before deciding the issues on merits.

8. Accordingly, we set aside the matter back to the file of the CIT(A) with direction to the CIT(A) to decide the issue on merits by a reasoned order, after affording reasonable opportunity of hearing to the assessee. Further the assessee is also directed to appear before the CIT(A) and participate in the appellate proceedings. The appeals are thus decided on this preliminary issue without going into the merits of the addition.

9. In ITA No. 4229/Del/2017, the appeal has been dismissed by the CIT(A) in limine on the ground that the appeal has been filed late by the assessee. The learned AR for the assessee before us has pointed out that there is no delay in filing the appeal late by one day, as the last day was Sunday and the appeal was filed on the next working day. Hence the appeal of the assessee be decided on merits. We find that the CIT(A) has dismissed the appeal in limine but since there is no delay in filing the appeal late, the appeal is restored back to the file of the CIT(A) to decide the same on merits, after affording reasonable opportunity of hearing to the assessee.

10. In ITA No. 4072/Del/2017 there is a delay of 12 days in filing the appeal late before the CIT(A). Despite the issue of notice, none appeared on behalf of the assessee. The Hon'ble Apex Court in Collector, land acquisition Vs. MST Katiji & Others reported in 167 ITR 471 has held that

when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, the other side cannot claim to have vested right in justice being done because of non-deliberate delay. There is no presumption that delay is occasioned deliberately. We are, therefore, of the view that small delay of 12 days needs to be condoned. Accordingly, we condone the same and remit the matter back to the file of CIT(A), who shall decide the appeal on merits after affording reasonable opportunity of hearing to the assessee.

11. Hence this bunch of appeals are restored back to the file of respective CIT(A)/s to decide the issue on merits after affording reasonable opportunity of hearing to the assessee. The assessee is also directed to comply with notices issued by the CIT(A). The preliminary issue raised in all the appeals is thus decided in favour of assessee. Since the appeals are being decided on the preliminary issue we are not addressing the issue raised on merit.

12. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 29th day of November, 2019.

Sd/-
(R.K. PANDA)
लेखा सदस्य/ACCOUNTANT MEMBER
दिल्ली / दिनांक Dated : 29th November, 2019
SH

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. मुख्य आयकर आयुक्त / The Pr. CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक रजिस्ट्रार, आयकर अपीलीय अधिकरण ,दिल्ली
Assistant Registrar, ITAT, Delhi