

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

सुश्री सुषमा चावला, उपाध्यक्ष, एवं श्री एन. के. बिलैया, लेखा सदस्य के समक्ष,  
BEFORE MS. SUSHMA CHOWLA, VICE PRESIDENT  
&  
Sh. N.K. BILLAIYA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.282 & 284/Del/2019  
निर्धारण वर्ष / Assessment Years 2014-15 & 2016-17

Airwil JKM Infracon Pvt Ltd.  
8/20, Kalkaji Extension,  
Delhi-110019  
PAN-AAMCA4974C

.....अपीलार्थी/Appellant

vs

DCIT,  
Central Circle, 2<sup>nd</sup> Floor,  
ARTO Complex,  
Sector-33, Noida,

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Sh. Dherender, C.A.

प्रत्यर्थी की ओर से / Respondent by : Sh. Pradeep Kr. Gautam, Sr. DR

सुनवाई की तारीख / Date of Hearing: 13.01.2020	घोषणा की तारीख / Date of Pronouncement: 31.01.2020
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, VP**

These two appeals filed by the assessee are against the order of CIT(A)-IV, Kanpur, dated 15/11/2018, relating to assessment year 2014-15 & 2016-17.

2. In these 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.

3. The learned AR for the assessee pointed out that the CIT(A) has passed the *ex-parte* order without allowing sufficient opportunity of hearing.

4. The learned DR for the Revenue on the other hand pointed out that sufficient opportunity has been afforded to the assessee.

5. We have heard the rival contention and perused the record. Under the provisions of Section 250(6) of the Income tax Act, 1961 (in short "Act"), it is incumbent upon the CIT(A) to decide the appeal after hearing the parties and state the points for determination, the decision thereon and also the reasons for the decision. While deciding the appeal, 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 appeals 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 give 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 appeals, we find that the

CIT(A) has dismissed the appeal *ex-parte* qua the assessee and had failed to decide the appeals by passing reasoned assessment order.

6. The Ld. DR for the Revenue in this case pointed that the CIT(A) has decided the issue on merits and hence, the proposition laid down by the Hon'ble Gujarat High Court in the case of Pr. CIT vs Ashokji Chanduji Thakor in R/Tax Appeal No.710 of 2018 & Ors., order dated 27/06/2018 is applicable.

7. The Hon'ble Gujarat High Court in the aforesaid case noted that the CIT(A) had passed well reasoned order and hence interference was called for in such order of the CIT(A).

8. Applying the said ratio to the facts of the present appeals, we find that in the present cases, the CIT(A) has only upheld the order of the Assessing Officer on merits by referring to the contentions of the Assessing Officer but has not decided the issue by way of any reasoning. The Hon'ble Apex Court in number of decisions have laid down that the principle of natural justice would be violated in case reasonable opportunity of hearing is not allowed to the assessee and also where the CIT(A) has failed to discuss the issue on merits, there is no merit in the *ex-parte* order passed by CIT(A) *qua* the assessee.

9. 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 appeal is thus decided on this preliminary issue without going into the merits of the addition.

10. Hence these appeals are restored back to the file of CIT(A) 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 this appeal is thus decided in favour of assessee. Since the appeal is being decided on the preliminary issue, we are not addressing the issue raised on merit.

11. In the result, both appeals of the assessee are allowed.

Order pronounced in the open court on 31<sup>st</sup> day of January, 2020.

**Sd/-**

**(N. K. BILLAIYA)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

**Sd/-**

**(SUSHMA CHOWLA)**

**उपाध्यक्ष /VICE PRESIDENT**

**दिल्ली** / दिनांक Dated : 31<sup>st</sup> January, 2020.

S. Shekhar, Sr. P.S.

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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

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