

आयकर अपीलिय अधिकरण, दिल्ली न्यायपीठ "जी", नई दिल्ली में

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री आर.कापांडा, लब्धा सदस्य का समक्ष
BEFORE MS. SUSHMA CHOWLA, JM & SH.R.K.PANDA, AM

आयकर अपील सं. / ITA No.1892/Del/2018

निर्धारण वर्ष / Assessment Year : 2009-10

Dharmraj Tyagi Urf Pintoo Tyagi,
C/o-Kapil Goyal, Adv.,
F-26/124, Sector-7, Rohini,
New Delhi.

PAN-ANOPT9959J

.....अपीलार्थी / Appellant

vs

The ITO,
Ward-3(5), Hapur.

..... प्रत्यर्थी / Respondent

अपीलार्थी की ओर स□/ Appellant by : Sh. Kapil Goel, Adv.

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

सुनवाई की तारीख / Date of Hearing: 16.12.2019	घोषणा की तारीख / Date of Pronouncement: 17 .12.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against order of CIT(A)-
2, Noida dated 15.12.2017 relating to assessment year 2009-10.

2. In this appeal, the assessee is aggrieved by the order of CIT(A) for deciding the appeal *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 and without going into the merits of the case.
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 contentions 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 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 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 appeal, we find that the

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

6. 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.

7. Hence this appeal is 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.

8. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 17th day of December, 2019.

Sd/-

Sd/-

(R.K.PANDA)

लखा सदस्य/ACCOUNTANT MEMBER

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली / दिनांक Dated : 17th December, 2019.

* Amit Kumar *

आदशा की प्रतिलिपि अग्रषित/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.

आदशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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