

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : A : NEW DELHI

BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2175/Del/2023  
Assessment Year: 2016-17

AVP Powerinfra Pvt Ltd.,  
ReNew Hub,  
Commercial Block-1,  
Zone 6, Golf Course Road,  
DLF City Phase-V,  
Gurugram.

Vs DCIT,  
Circle-1(1),  
New Delhi.

PAN: AAMCA5377K

(Appellant)

(Respondent)

|                       |  |
|-----------------------|--|
| Assessee by           | : Shri Rohit Jain, Advocate &<br>Ms Aditi Garg, CA |
| Revenue by            | : Shri Kanav Bali, Sr. DR                          |
| Date of Hearing       | : 11.07.2024                                       |
| Date of Pronouncement | : 27.08.2024                                       |

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Assessee against the order dated 30.05.2023 of the National Faceless Appeal Centre, Delhi (hereinafter referred as NFAC or in short Ld. 'FAA') in Appeal No.CIT(A), Indore-1/10216/2018-19 arising out of the appeal before it against the order dated 30.11.2018 passed u/s

143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by DCIT, Circle 1(1), Indore (hereinafter referred to as the Ld. AO).

2. At the time of hearing, it transpired that amongst other grounds on merits, the assessee has also raised a ground No.1 with sub-grounds alleging that the NFAC has not given the opportunity of hearing.

3. The Ld. DR although has defended the order of the NFAC, but, what comes up is that the NFAC mentions of the fact of issuance of notices on 13.04.2023 on which an adjournment was sought by the assessee followed by a notice dated 19.05.2023 when again adjournment was sought and, thereafter, on 25.05.2023 for which the assessee was supposed to reply by 30.05.2023. NFAC mentions that no details were filed nor any petition for adjournment was received and, accordingly, dismissed the appeal without entering on the merits.

4. The Id. AR has pointed out that on 22.05.2023, the assessee had placed on record a paper book running into two volumes and sought time for filing written submissions, a copy of which is made available as Annexure-II to the paper book. Further, on 30.05.2023, i.e., the date fixed for compliance of notice issued on 25.05.2023, the assessee had logged on the portal to file the submissions and an application for additional evidence but it was found that NFAC had already passed the order dismissing the appeal at 3.15 PM. Still, the

assessee had sent a submission and an application for additional evidence on 30.05.2019 by 20.29 PM.

5. We are of considered view that when a period of time running from a given day or event to another day or event is provided by a tax authority and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Thus when assessee was asked to reply by electronic mode then to assume that he has to apply in officer hours is not justified.

6. Further, the general rule is that, when an act may be done or a benefit enjoyed during a certain period, the act may be done or the benefit enjoyed upto the last moment of the last day of that period. A day for the purpose of reckoning the date ends before the stroke of midnight and the next date would commence at midnight immediately after the expiry of the previous day, as generally done in case of time barring assessments.

7. Thus, apparently, NFAC has passed the order at 3.15 PM without waiting reasonably for the assessee to respond to the notice dated 25.05.2023 during the whole of 30.05.2023. The only consequence that can follow is to set aside the order of the NFAC with a direction to give a reasonable opportunity of hearing to the assessee and to decide the appeal by taking into consideration the submissions, paper book and any application for additional evidence filed along.

8. Accordingly ordered and the appeal be considered allowed for statistical purposes.

Order pronounced in the open court on 27.08.2024.

Sd/-

Sd/-

(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Dated: 27<sup>th</sup> August, 2024.

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Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi