



THE HIGH COURT OF DELHI AT NEW DELHI

ITA No 477/2003

Judgment delivered on: 28.09.2004

COMMISSIONER OF INCOME-TAX, DELHI VII ...Appellant

- versus -

SH. P.V. KUMAR

...Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem lata Bansal

For the Respondent : None

CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C. PATEL, CJ (ORAL)

1. This appeal is filed by the appellant, Commissioner of Income-Tax against the order made by the Income-Tax Appellate Tribunal in ITA No.3301/Del/1998 on 22.11.2002. The appeal



relates to the assessment year 1994-95. In the instant case, paragraph 5 of the order reads as under:-

"5. Learned DR Smt. Pratima Kaushik appeared for the revenue. None appeared for the assessee. Notice fixing date of hearing sent by post has been received back with the postal authorities' remark "left". Hence, we are disposing of the appeal ex parte qua assessee but on merits after hearing the learned DR and perusing the record."

2. Before this Court also, the respondent is not served. It appears that the Tribunal rendered the decision in the absence of the assessee without effective service. The notice which was sent has been received with the postal remark "left". This indicates that the assessee was not served with the notice. A matter can be decided in absence of a party, provided, the party has been served and thereafter the party does not remain present before the Court or tribunal. But when the notice notifying the date of hearing has not been served on the assessee, there is no question of deciding the matter ex parte. The Tribunal ought to have waited for proper service and after the proper service on the party, it ought have decided the matter.

3. In view of this, the ends of justice would be met with if



the impugned order is set aside and the Tribunal is directed to decide the appeal afresh after ensuring effective service on the assessee in accordance with law. Ordered accordingly.

B. Prasad
CHIEF JUSTICE

Badar Durrez Ahmed
BADAR DURREZ AHMED, J

September 28, 2004
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