**(2004) 09 DEL CK 0123**

**In the Delhi High Court**

**Case No :** Income Tax A. No. 477 of 2003

Commissioner of Income Tax — APPELLANT

Vs

P.V. Kumar — RESPONDENT

**Date of Decision :** 28-09-2004

**Acts Referred:**

**Citation :** (2005) 199 CTR 429 : (2005) 279 ITR 9 : (2005) 145 TAXMAN 106

**Hon'ble Judges :** B.C. Patel, C.J;Badar Durrez Ahmed, J

**Bench :** Division Bench

**Advocate :** Prem Lata Bansal, for the Appellant; None, for the Respondent

## Judgement

B.C. Patel, C.J.—This appeal is filed by the appellant, Commissioner of Income Tax against the order made by the Income Tax Appellate Tribunal in I. T. A. No. 3301/Del/1998 on November 22, 2002. The appeal relates to the assessment year 1994-95. In the instant case, paragraph 5 of the order reads as under:

"5. Learned Departmental Representative, Smt. Pratima Kaushik, appeared for the Revenue. None appeared for the assessed. Notice fixing the 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 the assessed but on the merits after hearing the learned Departmental Representative 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 assessed without effective service. The notice which was sent has been received with the postal remark "left". This indicates that the assessed was not served with the notice. A matter can be decided in the absence of a party, provided, the party has been served and, thereafter, the party does not remain present before the court or the Tribunal. But when the notice notifying the date of hearing has not been served on the assessed, 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 to have decided the matter.

3. In view of this, the ends of justice would be met if the impugned order is set aside and the Tribunal is directed to decide the appeal afresh after ensuring effective service on the assessed in accordance with law. Ordered accordingly.