

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1342/KOL/ 2015
Assessment Year: 2009-2010**

Shri Manav Kejriwal,.....Appellant
Block-9, Flat No. 5H, 5th Floor,
Space Town Housing Complex,
VIP Road, Kolkata-700 052
[PAN: AWJPK 1519 R]

-Vs.-

Income Tax Officer,.....Respondent
Ward-49(2), Kolkata,
Manicktalla Civic Centre, Ultadanga,
Uttarapan Complex,
Kolkata-700 054

Appearances by:

Shri Sunil Surana, FCA, for the assessee
Shri Rajat Kumar Kureel, JCIT, D.R., for the Department

Date of concluding the hearing : February 27, 2017

Date of pronouncing the order : February 27, 2017

O R D E R

This appeal filed by the Revenue is directed against the order of Id. Commissioner of Income Tax (Appeals)-15, Kolkata dated 27.04.2015 and the ground raised by the assessee therein read as under:-

“(1) For that the order of the Id. CIT(A) is arbitrary, illegal and bad in law.

(2) For that the Id. CIT(A) erred in dismissing the appeal as not maintainable when the assessment itself was invalid, the very legality of the assessment was disputed before the Id. CIT(A) which was not the subject matter of proceedings u/s 263, since the assessee did not file any return and the said fact was disputed before the AO in the course of assessment proceedings itself.

(3) For that the Id. CIT(A) erred in not deciding the appeal on merits and treating the appeal as not maintainable on

the ground that the tax due on the returned income had not been paid by the assessee when no return of income was filed by the appellant which ground was also taken before the CIT(A).

(4) For that the ld. CIT(A) erred in treating the appeal filed by the appellant as in fructuous on the ground that the assessment order had been set aside by the CIT under section 263 when the appellant had filed an appeal before the Hon'ble ITAT against the order passed by the CIT u/s 263 which was yet to be heard and decided by the ITAT.

(5) For that on the facts and circumstances of the case, the order of the CIT(A) be modified and the assessee be given the relief prayed for.

2. The assessee in the present case is an individual, in whose case assessment proceedings were initiated by the Assessing Officer by issuance of notice under section 143(3). Although there was no full compliance on the part of the assessee to the said notice as well as the subsequent notices issued by the Assessing Officer under section 142(1), a letter dated 20.07.2011 was filed by the assessee pointing out to the Assessing Officer that he had not filed any return of income for the year under consideration, i.e. A.Y. 2009-10 as stated in the notice issued under section 143(2). The Assessing Officer, however, did not take cognizance of the said letter and proceeded to complete the assessment to the best of his judgment under section 144 vide an order dated 29.12.2011, whereby he assessed the total income of the assessee at Rs.4,25,000/- as stated to be declared by the assessee in the return of income filed on 31.03.2010.

3. Against the assessment made by the Assessing Officer under section 144, an appeal was filed by the assessee before the ld. CIT(Appeals). Meanwhile the said assessment made by the Assessing Officer under section 144 was set aside by the concerned ld. CIT, Kolkata-XVII vide an order passed under section 263 on 26.02.2014 and keeping in view the same, the appeal filed by the assessee against the order under section 144 was dismissed by the ld. CIT(Appeals) by treating the same as

infructuous. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. counsel for the assessee, an appeal against the order dated 26.02.2014 passed by the Id. CIT under section 263 was also filed by the assessee before the Tribunal and while disposing of the same, the following observations/findings have been recorded by the Tribunal in para no. 3 of its order dated 15.07.2016 passed in ITA No. 698/KOL/2014:-

"3. On the last day of hearing i.e. 5/1/2016 the Id. DR was directed to produce the assessment records and thereafter the case was fixed for hearing 4 times but till date no compliance has been made. On a specific query from the Bench about the genuineness of the return filed by the assessee, Id. DR failed to bring anything contrary to the arguments advanced placed by the Id. AR. In view of the above, we are of the opinion that the return filed by the assessee is not valid return. Accordingly assessment framed u/s. 144 and order passed u/s 63 of the Act becomes void ab initio. Section 140 of the Income-tax Act, 1961 provides for the persons by whom the return must be signed. The pertinent question that arises is whether it should be treated non est or a curable defect or a rectifiable mistake or can it be saved by some other statutory provision. Discussing the situation and the judicial decisions in this regard, we are of the opinion that section 139(1) of the Act mandatorily requires that the return should be furnished in the prescribed form and verified in the prescribed manner. Section 140 of the Act, again, mandatorily provides the list of persons who are eligible to sign the return. It is a well settled principle that if a statute provides for a thing to be done in a particular manner, then it is to be done in that manner and in no other manner, but the pertinent question is, if that thing is not done in conformity with the statutory requirement what would be its effect? Whether it should be treated non est or a curable defect or a rectifiable mistake or can it be saved by some other statutory provision? As a matter of fact, the aforesaid four probabilities have been drawn from the anomalous statutory and judicial delineations of the moot-point. In the case of Commr. of Agri. IT vs. Keshab Chandra Mandal (1950) 18 ITR 569 (SC) : TC 9R. 617, the Hon'ble Apex Court had laid down that return not signed or thumb marked by the illiterate assessee could not be treated as a properly signed and a valid return. In Waman Padmanabh Dande vs. CIT (1952) 22 ITR 339 (Nag) . TC 9R 394, a Division Bench of the Nagpur High Court had held that "where a return made is not in the prescribed form, or is not signed and verified as required by the prescribed form, it is an invalid return". The identical view seems to have been expressed by the Hon'ble Allahabad High Court in CIT vs. Dr. M.K. Gupta 1978 CTR (All) 36, (1978) 113 ITR 473 (All). Again, in CIT vs. Dr. Krishan Lal

Goyal (1984) 43 CTR (P&H) 135; (1984) 148 ITR 283 (P&H); TC 9R. 628, the Hon'ble Punjab and Haryana High Court held that if a return is not signed and verified as required by the prescribed form, it is an invalid return. Hon'ble jurisdictional High Court in National Insurance Co. Ltd. vs. CIT (1995) 127 CTR (Cal) 238; (1995) 213 ITR 862 (Cal); TC 59.1087 has also held that the non-signing of a return filed by the assessee would invalidate the return and no assessment thereon is called for and it cannot be said to be a defective return as the specific cases and circumstances indicating when/which return would be defective have been indicated in the explanation to section 139(9) and the Income-tax Officer cannot treat other cases and circumstances of deficiencies fatal to the return as being nearly defects in the return. Accordingly, the unsigned return was held to be invalid and not a case of mere defective return".

5. As rightly contended by the ld. counsel for the assessee, the Tribunal thus has held the assessment made by the Assessing Officer under section 144 for the year under consideration as *void ab initio* and consequently the present appeal filed by the assessee arising from the said order is liable to be allowed. Even the ld. D.R. has not been able to dispute or rebut this position. I, therefore, set aside the impugned order passed by the ld. CIT(Appeals) and allow this appeal of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on February 27, 2017 after conclusion of hearing.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 27th day of February, 2017

Copies to : (1) ***Shri Manav Kejriwal,
Block-9, Flat No. 5H, 5th Floor,
Space Town Housing Complex,
VIP Road, Kolkata-700 052***

(2) ***Income Tax Officer,
Ward-49(2), Kolkata,
Manicktalla Civic Centre, Ultadanga,
Uttarapan Complex,
Kolkata-700 054***

- (3) Commissioner of Income Tax(Appeals)-15, Kolkata;*
- (4) Commissioner of Income Tax- ,*
- (5) The Departmental Representative*
- (6) Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.