



IN THE INCOME TAX APPELLATE TRIBUNAL
"K" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER

ITA no.5744/Mum./2014
(Assessment Year : 2009-10)

Mercator Limited
3rd Floor, Mittal Tower
B-Wing, Nariman Point
Mumbai 400 021
PAN – AAACM507A

..... Appellant

v/s

Addl. Commissioner of Income Tax
Range-5(2), Aayakar Bhawan
101, M.K. Road, Mumbai 400 020

..... Respondent

Assessee by : Shri Vishal Agarwal
Revenue by : Shri N.K. Chand

Date of Hearing – 21.03.2016

Date of Order – 31.03.2016

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal of the assessee is directed against the order dated 23rd July 2014, passed by the learned Commissioner (Appeals)-15, Mumbai, dismissing the appeal for the assessment year 2009-10, in limine.

2. Briefly stated the facts are, assessee a company is engaged in the business of shipping and cargo handling services. For the

assessment year under consideration, assessee filed its return of income on 29th September 2009, declaring total income of ₹ 18,97,71,889. As during the relevant previous year, assessee had entered into international transactions with its A.E., a reference was made by the Assessing Officer to the Transfer Pricing Officer for determining the arm's length price. In terms with the order passed by the Transfer Pricing Officer, the Assessing Officer completed assessment vide order dated 21st May 2013, determining the total income at ₹ 1,66,30,27,920. Being aggrieved of the assessment order so passed, assessee preferred appeal before the learned Commissioner (Appeals). In the course of hearing of appeal, learned Commissioner (Appeals) having found that the memo of appeal in Form no.35 along with its enclosure had not been signed by the managing director or any director held that the appeal is not maintainable in terms of rule 45(2) of the Income Tax Rules, 1962. Accordingly, he proceeded to dismiss the appeal in limine without deciding on merits. Being aggrieved, assessee has filed the present appeal before us.

3. At the time of hearing, learned Authorised Representative submitted, after receipt of order passed by the learned Commissioner (Appeals), assessee had filed a fresh appeal before the first appellate authority rectifying the mistake by getting the appeal memo and

accompanying documents signed by the managing director. He submitted, assessee has also filed an affidavit seeking condonation of delay. Learned Authorised Representative submitted, the learned Commissioner (Appeals) has also taken cognizance of the fresh appeal filed by the assessee and the said appeal was heard by him on 26th February 2016. He, therefore submitted, the matter may be restored back to the file of the learned Commissioner (Appeals) for disposal along with the fresh appeal filed by the assessee.

4. Learned Departmental Representative has not opposed the aforesaid contention of the assessee.

5. We have considered the submissions of the parties and perused the material available on record. As could be seen, learned Commissioner (Appeals) has dismissed assessee's appeal in limine without deciding on merit for the reason that memorandum of appeal along with accompanying documents were not signed by the managing director / director. In our view, before dismissing assessee's appeal, learned Commissioner (Appeals) should have given an opportunity to the assessee to rectify the defect in appeal memo by filing a fresh form no.35 being verified by the managing director / director. However, before us, learned Authorised Representative has stated that the assessee in the mean while has filed a fresh set of memorandum

of appeal in form no.35, signed by the managing director, considering the aforesaid submissions of the assessee, we are inclined to set aside the impugned order of the learned Commissioner (Appeals) and restore the matter back to his file for deciding afresh. In case, as stated by the learned Authorised Representative, the deficiency pointed out by the learned Commissioner (Appeals) has been removed by the assessee by filing a fresh set of appeal memorandum in Form no.35, being signed by the managing director, the learned Commissioner (Appeals) should do well to dispose off assessee's appeal on merit after taking into cognizance the revised appeal memorandum filed by the assessee in which case the earlier appeal filed by the assessee would become infructuous. With the aforesaid directions, the matter is restored back to the file of the learned Commissioner (Appeals).

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 31.03.2016

Sd/-
ASHWANI TANEJA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 31.03.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai