

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 7869/Del/2018
Assessment Year: 2008-09

HEMINDER KUMARI,
105, JOR BAGH,
NEW DELHI – 110 003
(PAN AAJPK0331K)
(APPELLANT)

VS. DCIT, CC-8,
JHANDEWALAN EXTN.,
NEW DELHI – 55
(RESPONDENT)

Assessee by : SH. MADHUR AGGARWAL, ADV.
Department by : MS. NAINA SOIN KAPIL, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal has been filed by the Assessee against the order dated 30.11.2018 of the Ld. CIT(A)-24, New Delhi relating to assessment year 2008-09 on the following grounds:-

- i) That the Ld. CIT(A) has erred both on facts and in law, in dismissing the appeal of the appellant in limni as nonest, despite the fact the defect in the appeal manually filed by the appellant on 8.4.2016, had been removed on 9.11.2017; when such a defect had been cured by e-filing the appeal.

- ii) That the Ld. CIT(A) has failed to appreciate that on 8.4.2016, the appellant could not have filed the appeal through electronic mode, since EVC functionality for verification of e-appeals was made operational only from 12.5.2016 for individuals.
- iii) That the Ld. CIT(A) has failed to appreciate that the appeal filed manually could not be regarded as non-est appeal merely because the same was filed manually.
- iv) That the Ld. CIT(A) has further erred in observing that the appellant informed that the appeal filed by the appellant on 8.4.2016 had become infructuous; instead what had been stated was that, the defect in filing the appeal if any, was cured when a defect was removed on 9.11.2017 when the same was electronically filed.
- v) That in any case and without prejudice there being a sufficient cause for the alleged delay in removing the defect and filing the appeal manually, the Ld. CIT(A) ought to have held that such a technical objection is insufficient to hold that the appeal filed by the appellant was not maintainable and deserve to be dismissed in limni.

It is therefore prayed that the Ld. CIT(A) be directed to hear and dispose of the appeal on merits filed by the appellant on 8.4.2016 by holding that such an appeal was a valid appeal.

2. In this case the Assessee has Application dated 17.12.2018 requesting for early hearing on the ground that assessee is very old, hence, her case may be fixed for hearing, out of turn. Ld. DR has no objection to this request. Both the parties agreed that the issue in dispute is very small and may be decided today itself on the basis of record available. Keeping in view of the facts and circumstances of the present case and the orders of the revenue authorities, especially the impugned order, we are disposing of the main appeal of the assessee today itself in the forgoing paragraphs.

3. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of brevity.

4. During the hearing, Ld. counsel for the assessee has stated that the assessee is an individual and is more than 79 years of age and the appeal pertains to assessment year 2008-09. He further submitted that the aforesaid appeal arises from an order of the Ld. CIT(A) dated 30.11.2018, who has dismissed the appeal in limni since the same was not filed electronically but had been filed manually and also submitted that the defect in the appeal manually filed by the assessee on 8.4.2016, had been removed on 9.11.2017; when such a defect had been cured by e-filing the appeal. It is

further submitted that in any case and without prejudice there being a sufficient cause for the alleged delay in removing the defect and filing the appeal manually, the Ld. CIT(A) ought to have held that such a technical objection is insufficient to hold that the appeal filed by the assessee was not maintainable and deserve to be dismissed in limni. Therefore he requested to set aside the order of the Ld. CIT(A) and direct him with the directions to hear and dispose of the appeal on merits filed by the assessee on 8.4.2016 by holding that such an appeal was a valid appeal.

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. We have heard both the parties and perused the records, especially the orders passed by the revenue authorities. We find force in the arguments of the Ld. Counsel for the assessee that assessee is an individual and is more than 79 years of age. We further note that Ld. CIT(A) vide his impugned order dated 30.11.2018, has dismissed the appeal in limni since the same was not filed electronically but had been filed manually. However, the said defect had been removed on 9.11.2017, as stated by the Ld. Counsel for the assessee. Keeping in view of the facts and circumstances of the case and in the interest of justice, we set aside

the order of the Ld. CIT(A) with the direction to Ld. CIT(A) to hear and dispose of the appeal on merits filed by the assessee on 8.4.2016 and pass a speaking order in accordance with law, after giving adequate opportunity of being heard to the assessee. The assessee is also directed to file all the necessary documents to substantiate its case and fully cooperate with the Ld. CIT(A) in the proceedings and did not take any unnecessary adjournment.

7. In the result, the Appeal filed by the Assessee stands allowed for statistical purpose.

Order pronounced on 18/01/2019.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Dated:18/01/2019

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT TRUE COPY

By Order,

ASSISTANT REGISTRAR