

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR GADALE, JUDICIAL MEMBER

ITA No.2736/Bang/2017
Assessment year : 2013-14

Shri Vankadri Chinna Reddeppa Chetty, No.1014, Ground Floor, Ramya Sadana, RPC Layout, 11 th Main, 2 nd Stage, Vijayanagar, Bangalore-560 040. PAN – AAGPC 1246 C.	Vs.	The Income-tax Officer, Ward-3(2)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharath L, C.A
Respondent by	:	Shri S Venkatesh, JDIT (DR)

Date of hearing	:	13.05.2019
Date of Pronouncement	:	17.05.2019

ORDER

PER SHRI B.R BASKARAN, ACCOUNTANT MEMBER

The appeal filed by the assessee is directed against the order dated 7/11/2017 passed by Id CIT(A)-3, Bangalore and it relates to the asst. year 2013-14.

2. The assessee is aggrieved by the decision of Id CIT(A) in dismissing the appeal of the assessee in limine for not filing appeal papers by electronic mode.

3. We have heard the parties and perused the record. The assessment in the hands of the assessee for the year under consideration was completed by the AO on 28/3/2016 and notice of demand was served upon the assessee on 31/3/2016.

4. Aggrieved by the order of AO, the assessee preferred appeal before the Id CIT(A) by filing appeal papers manually on 12/4/2016, i.e within the time limit prescribed for filing appeal before the Id CIT(A). The first appellate authority noticed that Rule 45 of the Income-tax Rules required the assessee to file the appeal papers by electronic mode. Since the assessee has filed the appeal manually and the since the same is in violation of Rule 45 of the Income-tax Rules and also upon noticing that the assessee has not filed the appeal papers by electronic mode till the date of passing of appellate order, the Id CIT(A) dismissed the appeal treating the same as invalid one.

5. Aggrieved, the assessee has filed this appeal before us,.

6. The Id AR appearing for the assessee submitted that the assessee has since filed the appeal by electronic mode before the Id CIT(A). He further he submitted that the Id CIT(A) was not justified in dismissing the appeal on technical reason, i.e., for filing the appeal manually. The Id AR placed reliance on the decision

rendered by the Mumbai Bench of ITAT in the case of All India Federation of Tax Practitioners Vs. ITO in ITA No.7134/Mum/2017 dated 4/5/2018 and submitted that the ld CIT(A) may be directed to admit the appeal filed electronically and the delay in filing the appeal by electronic mode may be condoned.

7. The ld DR, on the contrary placed reliance on the order passed by the ld CIT(A).

8. We have heard the rival contentions and perused the record. We noticed that an identical issue has been considered by the Mumbai Bench of Tribunal in the case of All India Federation of Tax Practitioners (Supra). For the sake of convenience, we extract below the decision rendered by the Mumbai Bench in the above said case.

“6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of I.T. Rules 1962, mandating compulsory c-filing of appeals before appellate Commissioner with effect from 1st March 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e I.T. Act, 1961.

As per the facts of the present case, the assessment in the above case was completed u/s 143(3) of the I.T. Act 1961. However the assessee has filed appeal before Ld CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of 'State of Punjab Vs. Shyamalai Murari and others reported in AIR 1976 (SC) 1177' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgment reported as AIR 2005 (SC) 3304 in the case of 'Rani Kusum Vrs. Kanchan Devi,' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the c-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgment of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations.

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Del/16 in case titled Gurinder Singh Dhillon Vrs. ITO had restored the matter to the file of Ld. CIT(a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner.

Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Ld. CIT(A) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we allow the appeal filed by the assessee.”

9. We noticed that Mumbai bench has condoned the delay in filing the appeal by electronic mode. In the instant case we have earlier noticed that the assessee has filed the appeal manually within the limitation period. Hence the delay in filing the appeal by electronic mode is hereby condoned by following the decision rendered by Mumbai bench in the above said case.

10. Since the ld CIT(A) has not adjudicated the issues urged on merits, we direct the ld CIT(A) to adjudicate the issues urged on

merits by passing speaking order after affording adequate opportunity of being heard.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on **17th May, 2019.**

Sd/-
(Laliet Kumar)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 17th May, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.