

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं

श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 458/CHNY/2019

निर्धारण वर्ष /Assessment year : 2013-2014.

Shri. S. Vimal Kumar,
Prabhakar Apartment, 2nd floor,
36 Melony Road,
T. Nagar,
Chennai 600 017.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 6(1)
Chennai.

[PAN AAMPS 0651B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None
प्रत्यर्थी की ओर से /Respondent by : Shri. D. Divahar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 16-09-2019
घोषणा की तारीख /Date of Pronouncement : 10-10-2019

आदेश / O R D E R

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai ('CIT(A)' for short) dated 31.12.2018 for the Assessment Year (AY) 2013-2014.

2. The Assessee raised the following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to law and facts of the case.

2. The appellant, therefore, humbly submits that the impugned order is illegal and unsustainable in law.

3. The Commissioner of Income Tax (Appeals) has not accepted the original form 35 filed manually well within the due date and the CIT appeal failed to appreciate the fact that the appellant had filed form 35 electronically only to supplement the original return filed manually.

4. The CIT appeals failed to appreciate the genuineness of the appellant on account of the fact that the original form 35 filed manually was well within the due date specified for filing the appeal with appellate authorities and the appellant further contends that is only a question of inadvertent mistake on the part of appellant in not filing the form 35 electronically for a form 35 already filed manually well within the due date and hence this appeal.

3. The brief facts of the case are as under:

The appellant is an individual deriving income under the head "income from Salary". The return of income for the AY 2013-14 was filed on 04.08.2013 disclosing total income of ₹35,35,860/-. Against the said return of income, the assessment was completed by the Deputy Commissioner of Income Tax, Corporate Circle 6(1), Chennai after making disallowance of ₹19,20,047/- u/s.14A of the Act and restricting interest on housing loan by ₹1,53,568/- vide order dated 29.03.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act').

4. Being aggrieved, assessee moved petition dated 11.04.2016 u/s.154 of the Act pointing out the mistake in the calculation of disallowance u/s.14A of the Act, who had modified the amount of disallowance at ₹4,60,063/- u/s.14A of the Act.

5. Being aggrieved by the amount of disallowance, assessee preferred an appeal before Id. CIT(A) manually on 28.04.2016. The Id. CIT(A) had called upon the assessee as to why the appeal cannot be treated as non-est in the eyes of law as appeal was not filed electronically as prescribed under Rule 45 of the Income Tax Rules, 1962. Subsequently, assessee filed the appeal electronically on 19.12.2018. The Id. CIT(A) concluded that appeal was filed with delay of 918 days and the explanation given for delay is held to be not bonafide and accordingly dismissed the appeal.

6. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. At the time of hearing, none appeared on behalf of the assessee.

7. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

8. We heard the Id. Sr. Departmental Representative and perused the material on record. The appeal was filed manually within the period of limitation prescribed under the statute. No doubt Income

Tax Rules prescribes that the appeal before the Id.CIT(A) should be filed electronically. It is matter of record that Id. CIT(A) had accepted the appeal, the defect was pointed out only in the year 2018 and immediately, thereafter assessee had filed appeal electronically in terms of Rule 45. The right of appeal is an substantive right. The form of filing of appeal procedure prescribed falls within the domain of law of procedure. The law of procedure has to be approached, understood and appreciated as a helpmate in the course of the process of administration of justice. Procedural provisions should be – so construed as to subserve the course of justice and not to hinder it. It is now well-settled that a procedural provision, ordinarily, should not be construed as mandatory, if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage. Procedural laws are devised and enacted for the purpose of advancing justice. Reference can be made to the decision of Hon'ble Calcutta High Court in the case of CIT vs. Hardeodas Agarwalla Trust, (1992) 198 ITR 511. In the present case, though the appeal was filed manually, Id. CIT(A) had taken cognizance of appeal memo, when required by CIT(A) to file appeal electronically, it was duly complied with by the assessee. Therefore, appeal relates back to the date of filing of appeal manually. Thus, there was no delay in filing the appeal before the Id. CIT(A).

Therefore, we hold that Id. CIT(A) ought not have dismissed the appeal in limine without considering the merits of the assessments. In the circumstances, we remit the matter back to the file of the Id. CIT(A) for denovo assessment after affording due opportunity of hearing to the appellant in accordance with law. Hence, appeal filed by the assessee is partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced on 10th day of October, 2019, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 10th October, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |