

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1153/Chny/2019

निर्धारण वर्ष /Assessment Year : 2013-14

Shri Ravi Prabhakar,
No.40/72, Anand Flats, B-9, 3rd floor,
Gandhi Nagar, 2nd Main Road,
Adyar, Chennai - 600 020.

v. The Income Tax Officer,
Non Corporate Ward - 15(3),
Chennai - 600 034.

PAN : AAAPP 7643 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Sh. N. Devanathan, Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख / Date of Hearing : 25.11.2019

घोषणा की तारीख / Date of Pronouncement : 02.01.2020

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -15, Chennai, dated 27.12.2018 and pertains to assessment year 2013-14.

2. There was a delay of 52 days in filing this appeal by the assessee before this Tribunal. The assessee has filed a petition for condonation of delay. We have heard the Ld. counsel for the assessee and the Ld. D.R.

We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Sh. N. Devanathan, the Ld.counsel for the assessee, submitted that the assessee filed the appeal against the order of the assessment before the CIT(Appeals) on 29.04.2016 manually within the period of limitation. The CIT(Appeals) issued a show cause notice on 30.11.2018 pointing out that the assessee has not filed the appeal electronically. According to the Ld. counsel, the assessee filed the appeal electronically on 25.07.2019. The CIT(Appeals), however, found that the filing of appeal electronically is mandatory, therefore, he dismissed the appeal. According to the Ld. counsel, since the assessee has filed the appeal electronically on 25.07.2019, the delay in filing the appeal before the CIT(Appeals) may be condoned and the CIT(Appeals) may dispose of the appeal on merit.

4. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. According to the Ld. D.R., the assessee filed the appeal electronically only after the CIT(Appeals) disposed of the appeal by the impugned order on 27.12.2018. Therefore, on the date of passing of impugned order, there was no valid appeal pending before the CIT(Appeals). Hence, according to the Ld. D.R., there is no question of condonation of delay. Referring to Rule 45 of Income-tax Rules, 1962,

the Ld. D.R. submitted that filing of appeal electronically is mandatory. Therefore, the assessee is expected to file the appeal electronically within the stipulated time of 30 days from the date of receipt of copy of assessment order. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly dismissed the appeal of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Section 249 of the Income-tax Act, 1961 (in short 'the Act') provides form of appeal and limitation before the CIT(Appeals) against the order of assessment. The appeal shall be filed in the prescribed form before the CIT(Appeals) and shall be verified in the prescribed manner. The form was in fact prescribed in Form 35 for filing appeal before the CIT(Appeals). Rule 45 of Income-tax Rules, 1962 provides the manner in which the appeal in Form 35 shall be filed. Rule 45 mandates that in case of an assessee, who is required to furnish return of income electronically under Rule 12(3) of Income-tax Rules, 1962, shall furnish the appeal electronically under digital signature. In case of an assessee, whose return is filed manually, he has an option to file the appeal either manually / in paper form or electronically. Therefore, the procedure prescribed under Rule 45 mandates the assessee to file appeal in Form 35 electronically. In this case, the assessee admittedly filed the appeal manually / in paper form.

Therefore, the question arises for consideration is when the assessee has filed appeal manually / in paper form, can we say that there was no valid appeal before the CIT(Appeals)? Technically speaking, the assessee has to file the appeal as per the procedure prescribed in Rule 45. Section 246A of the Act provides an appeal before the CIT(Appeals) against assessment order. This right of appeal provided under Section 246A of the Act is a substantive right under the scheme of the Income-tax Act.

6. The assessee admittedly filed the appeal manually / in paper form within the period of limitation before the CIT(Appeals) under Section 246A of the Act. Now the Revenue claims that Rule 45 of Income-tax Rules, 1962 provides for filing appeal electronically in Form 35, therefore, the appeal filed in Form 35 manually / in paper form is not maintainable. This contention of the Revenue takes us to a question when there is a conflict between substantive justice and technicality, whether technicality is to be preferred or substantive justice? This was examined by the Apex Court in Collector, Land Acquisition v. MST. Katiji And Others (1987) 167 ITR 471. The Apex Court found that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred rather than technicality. In fact, the Apex Court has observed as follows:-

"And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. " Every day's delay must be explained " does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, common sense and pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."
7. Moreover, under Article 265 of Constitution of India, no tax shall be levied except by authority of law. Therefore, when the assessee has a substantial right of appeal under Section 246A of the Act, such a right cannot be taken away so lightly merely because there was a violation of

procedural aspect in the form of filing appeal. Sofar, the assessee was permitted to file appeal in manual / paper form. Now the Department switched over to electronical format for filing the appeal. This is the transition stage. Therefore, there may be a misunderstanding in filing the appeal whether the appeal has to be filed electronically or manually. This Tribunal is of the considered opinion that whatever may be the reason for filing appeal manually, now the assessee filed the appeal electronically on 25.07.2019. Therefore, even the procedure of filing of appeal electronically has been complied with by the assessee. Therefore, throwing the assessee out of court by saying that the appeal was not filed electronically may not be justified at all.

8. The assessment proceeding before the Assessing Officer and the CIT(Appeals) is a judicial proceeding as provided under Section 136 of the Act. Moreover, the very object of proceeding before the income-tax authorities is to compute the taxable income, levy tax thereon as per the law and collect the same as per the procedure prescribed for collection of tax. Therefore, merely on technicalities, the Government cannot retain a single pie of taxpayer which is not authorized by law. In this case, an effective appeal remedy is provided under Section 246A of the Act, therefore, merely because there was a technical flaw or violation of not filing the appeal initially by electronically which was admittedly complied

by the assessee subsequently on 25.07.2019, this Tribunal is of the considered opinion that the appeal of the assessee cannot be thrown away. At the best, we may say that there is a delay in filing the appeal electronically as provided under Rule 45.

9. By keeping the law laid down by Apex Court in Collector, Land Acquisition (supra), provisions of the Constitution for levy and collection of taxes and the transition period the taxpayers and the Department are passing through, this Tribunal is of the considered opinion that the delay in filing the appeal electronically has to be condoned. Accordingly, the delay in filing the appeal electronically is condoned and the impugned order of the CIT(Appeals) is set aside and the entire issue raised by the assessee is remitted back to the file of the CIT(Appeals) for consideration on merit.

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

Order pronounced in the court on 2nd January, 2020 at Chennai.

Sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 2nd January, 2020.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai
4. Principal CIT-6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.