

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.2027 & 2028/Bang/2018
(Assessment years : 2013-14)

M/s Kandalaa,
No.743, 33rd Cross, 10th Main,
4th Block, Jayanagar,
Bangalore-560 027
PAN No.AAKFK7059H

Appellant

Vs

The Income Tax Officer,
Ward-7(2)(1),
Bangalore

Respondent

Assessee by : Ms. Preethi S Patel, Advocate
Revenue by : Smt. R.Premi,JCIT

Date of Hearing : 08-06-2020
Date of Pronouncement : 10-06-2020

ORDER

PER B.R.BASKARAN, AM:

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-7, Bengaluru and both relate to the assessment year 2013-14. In both the appeals, the assessee is aggrieved by the decision of Ld CIT(A) in dismissing the appeals in limine.

2. The assessee is a partnership firm and is a dealer in Gold, Diamond & silver ornaments. The assessment for the year under consideration was completed by the AO in the hands of the assessee on 19-03-2016 u/s 143(3) of the Act. The assessee challenged the same by filing appeal manually before Ld CIT(A) on 22-04-2016. The Ld CIT(A)

noticed that the assessee should have filed the appeal in electronic mode as per Rule 45 of IT Rules. Hence the Ld CIT(A) issued a show cause notice asking the assessee as to why his appeal should not be dismissed. The Ld CIT(A) noticed that the assessee did not furnish proper reply. He also noticed that the CBDT has extended the date of filing appeal in electronic mode to 15-06-2016 and the assessee did not avail the said opportunity so given. Accordingly, vide his order dated 27-12-2017, the Ld CIT(A) dismissed the appeal of the assessee holding the same as invalid, since it was not filed in electronic mode as mandated by Rule 45 of I T Rules. Challenging the same, the assessee has filed an appeal before Tribunal and the same is numbered as ITA 2027/Bang/2018.

3. The assessee filed another appeal before Ld CIT(A) in electronic mode on 28-12-2017 challenging the very same assessment order, i.e., dated 19-03-2016 passed for the year under consideration. Since the Ld CIT(A) had dismissed the appeal filed by the assessee manually for the very same assessment year, he took the view that the appeal filed electronically shall become infructuous and invalid. Accordingly the Ld CIT(A) dismissed the appeal of the assessee with the following observations:-

“5. However, it is seen that the instant appeal has been filed again by the appellant electronically on 28-12-2017 for the AY 2013-14 against the order u/s 143(3) passed by the AO. As the appeal of the appellant has already been disposed off on 27.12.2017 for the same assessment year and against the same order of the AO, the present appeal, thus, becomes infructuous and invalid. Therefore, the appeal filed by the appellant on 28-12-2017 is dismissed as invalid.”

Challenging the above said order, the assessee has filed appeal before the Tribunal and the same is numbered as ITA2028/Bang/2018.

4. The Ld A.R submitted that the Ld CIT(A) was not justified in dismissing both the appeals in limine, particularly, when the second

appeal has been filed electronically in compliance with Rule 45 of IT Rules. The Ld D.R, on the contrary, submitted that the first appeal of the assessee was rightly dismissed, since the same was filed manually in contravention of Rule 45 of I T Rules. Since the appeal of the assessee has already been dismissed by Ld CIT(A), the assessee was not right in filing appeal before Ld CIT(A) second time against the very same assessment order.

5. We heard the parties and perused the record. The assessment order in the hands of the assessee for the year under consideration was passed by the AO on 19-03-2016 and the same was served upon the assessee on 24.03.2016. The assessee filed appeal before Ld CIT(A) on 22.04.2016 challenging the above said assessment order. However the said appeal came to be filed manually, while Rule 45 of the I T Rules mandates filing of appeal electronically. Since there was violation of Rule 45 of I T Rules, the Ld CIT(A) has dismissed the appeal of the assessee treating the same as invalid, meaning thereby, the Ld CIT(A) did not admit the appeal of the assessee at all. Hence there was no occasion for Ld CIT(A) to decide the issues urged before him on merits.

6. We notice that the Ld CIT(A) has passed the order on 27-12-2017. Immediately on the next day, i.e., on 28-12-2017, the assessee filed another appeal in electronic mode before Ld CIT(A) challenging the very same assessment order, thus complying with the provisions of Rule 45 of I T Rules. This appeal was dismissed by Ld CIT(A) holding the same as infructuous and invalid, since he has already passed an order for the very same assessment year against the very same assessment order. Hence the second appeal filed by the assessee was also not admitted.

7. It can be noticed that the Ld CIT(A) has not admitted the appeal of the assessee filed manually only for the reason that the same was not filed in electronic mode. We notice that the Mumbai bench of Tribunal has considered an issue relating to filing of appeal in manual mode instead of electronic mode in the case of All India Federation of Tax Practitioners Vs. ITO in ITA. No. 7134/M/2017 dated 04.05.2018. The

relevant finding has been given in para no. 6 of its order and the same is extracted below: -

"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 e-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. Shyamalal 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 Honble 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 judgement 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 e-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

judgement 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 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 to 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."

8. We notice that the co-ordinate bench has taken the view that the filing of appeal manually was only a technical breach and accordingly set aside the order passed by Ld CIT(A) and restored the matter back to the file of Ld CIT(A) with the direction to the assessee to file the appeal again electronically within 10 days from the date of receipt of order of ITAT. Further direction was given to Ld CIT(A) to condone the delay in e-filing the appeal and to consider the appeal on merits.

9. In the instant cases, the assessee has already filed appeal for the second time in electronic mode. As per the decision rendered by the co-ordinate bench in the case of All India Federation of Tax practitioners

(supra), the breach in filing appeal manually was only a technical breach and accordingly another opportunity was given to the assessee to file the appeal electronically, whereas , in the instant case, the assessee has already filed the appeal electronically. Accordingly we are of the view that the Ld CIT(A) was not justified in dismissing the appeal filed electronically in compliance with Rule 45 of I T Rules. Accordingly, we set aside the order passed by Ld CIT(A) on 17.04.2018 against the appeal filed by the assessee for second time electronically and restore all the issues to his file. Since the assessee has filed the appeal manually in time, we condone the delay in filing the appeal in electronic mode in compliance with the provisions of Rule 45 of I T Rules. Since the Ld CIT(A) has not adjudicated the issues urged on merits, we direct him to adjudicate them in accordance with law after affording adequate opportunity of being heard to the assessee.

10. Since we have restored the appeal of the assessee filed for second time in electronic mode, the appeal filed by the assessee in ITA No.2027/Bang/2018 shall become infructuous.

11. In the result, the appeal of the assessee filed in ITA No.2027/Bang/2018 is dismissed and the other appeal of the assessee is treated as allowed for statistical purposes.

Order Pronounced on 10-06-2020

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Plac: Bangalore
Dated : 10-06-2020

*am

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

By order
Asst. Registrar

