

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ “एकल सदस्यीय”, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH ‘SMC’  
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य  
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ ITA No. 236/CHD/2020  
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Gurdeep Singh Mangat, VPO Chhadran, Rampur, Distt. Ludhiana, 2124, Broadway Street Abbotsford British Columbia, Canada.	बनाम VS	The ACIT, International Taxation, Circle – Chandigarh.
स्थायी लेखा सं./PAN No: AWBPM7120Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Gupta, C.A.

राजस्व की ओर से/ Revenue by : Smt.Meenakshi Vohra, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 03.03.2021

उदघोषणा की तारीख/Date of Pronouncement : 08.03.2021

**Hearing conducted via Webex**

**आदेश/ORDER**

The present appeal has been filed by the assessee wherein the correctness of the order dated 03.12.2019 of CIT(A)-43 New Delhi pertaining to 2011-12 assessment year is assailed on various grounds including ground Nos. 1 & 2 which read as under :

- “1. That, on the facts and in the circumstances of the case and as per law, the Ld CIT(A) has gravely erred in dismissing the appeal of the assessee filed in paper form in limine, on ex-parte basis.
2. That the Ld CIT(A), after having taken additional evidence on record with remand report of AO. ought to have decided the case on merits.”

2. The ld. AR inviting attention to the impugned order submitted that the assessee's appeal has been dismissed on mere

technicalities, that too wherein there was no legal requirement for the assessee to file an appeal electronically. It was his submission that the additions made by the AO were challenged in appeal and thereafter the issue was set aside. In the set aside proceedings, the assessee had challenged again before the CIT(A) the additions sustained. The CIT(A) in the facts of the present case, without confronting the assessee at the first instance that the appeal should have been filed electronically, dismissed the appeal without affording the assessee an opportunity to bring to his notice that there was no legal requirement in terms of Rule 12(5) and Rule 45 of the Income Tax Rules to file the appeal electronically. The appeal, it was submitted, pertaining to 2011-12 assessment year did not necessitate an electronic filing. It was dismissed holding:

*“5.3 The present appeal in question was filed on 30.01 2019. The appellant is liable to file his return electronically under Rule 12(3). It is therefore seen that there is no provision under which a appeal in paper form can be filed by the aforesaid person as it does not fall under clause (b) of Rule 45(2). As the appeal filed is not in accordance with proper procedure mandated under the Rules, it cannot be entertained and proceeded farther on merits. Therefore, the appeal filed in paper form is hereby dismissed in limine.”*

2.1. In the aforesaid facts and circumstances, the order was assailed to be not maintainable in law.

3. The ld. Sr.DR submitted that no doubt the appeal belonged to 2011-12 assessment year, however it was her submission that the Rules applicable would be the Rules as on date of the filing of the appeal and not in terms of which assessment year they pertained

to. It was her submission that at the time of filing of the appeal, the assessee under law was duty bound to file it electronically, however, it was her submission that she would have no objection if the assessee is given permission to rectify the said position and a speaking order on merits is passed.

4. The ld. AR on the other hand insisted that in terms of Rule 12(5) and 45, there was no such legal requirement. However, for a decision on merits, he had no objection to going back.

5. Considering the submissions of the parties before the Bench and the material available on record, it is deemed appropriate to restore the issue back to the file of the CIT(A) permitting the assessee to raise the preliminary objection to the requirements of filing the appeal electronically. In the eventuality the CIT(A) comes to a conclusion contrary to the assessee's submissions, needless to say after giving an effective opportunity of being heard, the assessee be permitted to comply with the legal requirement, if so held against him. The issue, thereafter be decided on merits, again after giving the assessee a reasonable opportunity of being heard.

6. In the facts of the present case, considering the material available on record, I am of the view that the CIT(A) would have been well advised to confront the assessee with procedural shortcomings noticed, if any, before the passing of the order. Accordingly, in the peculiar circumstances, the CIT(A) is directed to first address the preliminary objection by way of a speaking order

and thereafter pass a speaking order in accordance with law on the merits of the appeal after giving the assessee a reasonable opportunity of being heard. Said order was pronounced at the time of virtual hearing itself in the presence of the parties via Webex.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 8<sup>th</sup> March,2021.

Sd/-

(दिवा सिंह )

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar