

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफऔर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFOUR RAHMAN, AM

आयकर अपील सं./ ITA No. 4192/Mum/2019

(निर्धारण वर्ष / Assessment Year 2014-15)

M/s Deesan Cotex Private Limited 4-A, Vikas Centre 104, S.V. Road, Santacruz (West), Mumbai-400 054	बनाम/ Vs.	The Income Tax Officer Ward 12(2)(1) Aayakra Bhavan, Maharshi Karve Road, Churchgate, Mumbai-400020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AACCD5376P		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Bharat Andhle, DR

सुनवाई की तारीख / Date of hearing:	14.07.2021
घोषणा की तारीख / Date of pronouncement:	14.07.2021

आदेश / O R D E R

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-20, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-20/IT-10663/2016-17 vide dated 22.03.2019. The Assessment was framed by the Income Tax Officer, Kudal (in short ITO/ AO) for the A.Y. 2014-15 vide order dated

26.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) dismissing the appeal treating it as invalid. The learned Counsel for the assessee first of all took us through the ground No. 1 which read as under: -

"Ground NO.1

On the facts and circumstances of the case and in the law, the Hon'ble CIT(A) erred in dismissing the appeal and treating it as invalid due to error in filing Form 35. The appellant prays before your Honor to direct the Ld. CIT(A) to adjudicate the appeal afresh."

3. Subsequently, the learned Counsel for the assessee took us through the order of CIT(A) vide Para 2, 3 and 4 and stated that the CIT(A) has just dismissed the appeal as it is neither verified by managing director nor by any director and he dismissed the appeal as invalid by observing in Para 4 as under: -

"4. In the instant case, the Form No.35 has been verified neither by the Managing Director nor any other Director. Therefore, the appeal is not valid. Accordingly, the appeal is treated as dismissed."

4. In this, we have seen a letter dated 08.06.2019 of the Director of the assessee company, wherein it is clarified that form 36 has not

signed by the Director and relevant context of the letter reads as under:-

"RE: M/s Deesan Cotex Private Limited

Sub: Clarification regarding Form 36 signed by the Director.

This has reference to the form 36 being filed by M/s Deesan Cotex Private Limited in respect of Assessment Year 2014-15 before your Honour.

In respect of the same, it is submitted that as the company is not having any Managing Director as on date, any director is competent to sign the appeal application. Therefore, the assessee has complied with sub rule (2) of Rule 45 read with Rule 47 of the Income Tax Rules 1962 and Section 140(c) of the Income Tax Act, 196.

We request your honour to take the same into consideration and oblige.

5. We noted from Form No. 35 also that this form has been digitally signed by one Director Shri Hiral Chintan Patel and the relevant verification reads as under:-

Form of Verification

I DEESAN COTEX PRIVATE LIMITED the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no

additional evidence other than the evidence stated in row 12.1 above has been filed.

Place: Mumbai

Date: 25/01/2017

This form has been digitally signed by HIRAL CHINTAN PATEL having PAN AKYPP2616H from IP Address 203.115.123.146 on 2017-01-25 17:07:27:0.

Dsc SI No and issuer 2190959699283688129CN=SafeScrypt sub-CA for RCAI Class 2 2014, OU=Sub-CA,O=Sify Technologies Limited, C=IN

6. Once, the proper verification is done digitally by the Director, there is no defect in the appeal filed before CIT(A), hence, we set aside the order of CIT(A) and remand the matter back to his file for fresh adjudication on merits. The appeal is allowed for statistical purposes.

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

Order pronounced in the open court on 14.07.2021.

Sd/-

(एस रिफऔर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated. 14.07.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True_ व .निजी सचिवyraterceS etavirP .rS /

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai