

आयकर अपीलीय अधिकरण, डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 2798/CHNY/2019

निर्धारण वर्ष / Assessment Year: 2009-10

Shri J.M. Vishwanath,
B-3, Seaside Serenade, Devi
Palaniappa Thottam, ECR,
Kanathur,
Kancheipuram – 603112.

Vs **The ACIT,**
Non-Corporate Circle -18,
Chennai – 34.

PAN: AADPV 6355J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri N.V. Narayanan, Advocate
: Shri Sanat Kumar Raha, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 02.12.2021

घोषणा की तारीख/Date of Pronouncement

: 02.12.2021

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.165/CIT(A)-15/2016-17, order dated 27.12.2018. The assessment was framed by the ACIT, Non-Corporate Circle-18, Chennai for the assessment year 2009-10 vide order dated

31.03.2016 u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act').

2. At the outset, it is noticed that this appeal before Tribunal is time barred by 206 days and the reason for delay was that the assessee received notice dated 13.12.2018 from the office of CIT(A) instructing him to file the appeal electronically within 10 days from the date of receipt of notice in accordance with Rule 45 of the Income Tax Rules, 1962 (hereinafter the 'Rules'), which mandates electronic filing of appeals. The assessee narrated that he has filed electronic appeal on 24.12.2018 and complied with the notice dated 13.12.2018, but received order of CIT(A) dismissing the appeal dated 27.12.2018. The assessee was advised that electronic appeal filed would be heard separately and disposed off. Therefore, the appeal was not filed before the Tribunal against the order of CIT(A). The assessee has given the reason in para 5 & 6 of his affidavit filed along with condonation petition, which is as follows:

“5. I further stated that the appeal against the CIT(A)-15 order number ITA No.165/CIT(A)-15/2016-17 dated 27-12-2018 should have been filed on or before 30.03.2019 i.e. 60 days from 29.01.2019. I also state that I was advised that the Electronic Appeal would be separately heard and disposed and therefore I had been waiting for the notice of hearing of Electronic Appeal.

However, I state that the appeal was not taken up for hearing till date.

6. I also state that I am now advised, out of abundant caution, to file an appeal before the Income Tax Appellate Tribunal against the order number ITA No.165/CIT(A)-15/2016-17 dated 27.12.2018.

7. I submit that I have always taken adequate measures to keenly comply with all tax matters and regulations and have been vigilant and cautious in this regard.

8. I submit that the delay is only on account of reasons as stated above. I submit that the delay in filing the appeal is neither willful nor wanton and is only due to afore mentioned reason.”

From the above, it is clear that the electronic appeal was already available with the office of CIT(A) and assessee was under bonafide belief that the CIT(A) will decide that appeal and hence, he did not file the appeal against the order of CIT(A) dismissing the appeal. We find the cause as reasonable and hence, condone the delay of 206 days.

3. The only issue in this appeal of assessee is against the order of CIT(A) in violating the principles of natural justice in not allowing opportunity to assessee to rectify the defect of non-compliance of provisions of Rule 45 of the Rules. For this, assessee has raised various grounds, which need not be reproduced.

4. We have heard rival contentions and gone through the facts and circumstances of the case. The assessee filed manual appeal before CIT(A) on 02.05.2016, whereas as per the provision of Rule 45 of the Rules, the assessee has to file electronic appeal instead of appeal filed on manual form No.35. This appeal was within time. The assessee received letter from the office of CIT(A) dated 13.12.2018, whereby CIT(A) allowed 10 days time for filing of appeal through electronic mode i.e., e-filing instead of Form No.35. The assessee filed appeal on 24.12.2018 i.e., within 11 days and time allowed was 10 days. Practically there is a delay of 1 day. The CIT(A) dismissed the appeal *in-limine* by stating that the assessee has not filed a valid appeal within the prescribed time limit and hence, dismissed the appeal *in-limine*. He further observed that there would be no cause to adjudicate the grounds raised by the assessee in appeal. Now before us, the assessee's counsel only stated that the appeal be restored back to the file of the CIT(A) for adjudication of appeal filed through e-filing, which is already available on the records of CIT(A). The assessee along with letter of CIT(A) dated 13.12.2018 filed proof of appeal filed through electronic filing which is kept on record. Once, the assessee has filed e-appeal electronically and there is a one day delay from the time given by CIT(A) in his notice, the CIT(A)

should not have taken such a drastic step of dismissing the appeal. Hence, we set aside the order of CIT(A) and restore the matter back to his file for fresh adjudication i.e., adjudication of e-appeal.

5. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the court on 2nd December, 2021 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 2nd December, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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