

आयकर अपीलिय अधिकरण
मुंबई पीठ "एफ"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री ओम प्रकाश कांत , लक्षा सदस्य का समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
आअसं. 7398/मुं/2019 (नि. व. 2012-13)
ITA NO.7398/MUM/2019(A.Y.2012-13)

Vama Private Limited,
(formerly known as Vama Deparmtnet
Store Private Limited),
Kanchanjunga, 72, Peddar Road,
Mumbai 400 026

PAN: AAACV-1262-E

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt. Commissioner of Income Tax, Circle -5(3)(2)
Aaykar Bhavan, M.K.Road,
Mumbai- 400 020.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Prakash Jotwani

प्रतिवादी द्वारा/Respondent by : Shri S.N.Kabra

सुनवाई की तिथि/ Date of hearing : 12/04/2022

घोषणा की तिथि/ Date of pronouncement : 12/04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals) -10, Mumbai [in short 'the CIT(A)'] dated 26/09/2019 for the assessment year 2012-13.

2. Shri Prakash Jotwani appearing on behalf of the assessee submitted at the outset that the appeal of the assessee was dismissed by the CIT(A) solely on the ground that in Form No.35 assessment year has been mentioned as 2014-15 instead of assessment year 2012-13. The wrong assessment year mentioned in Form No.35 has not been rectified, rather there is no provision to revise the Form electronically. The Id.Counsel for the assessee fairly admitted that at the time of filing first appeal before the CIT(A) electronically, while punching the assessment year instead of assessment year 2012-13 the assessment year was wrongly mentioned as assessment year 2014-15. The error in punching assessment year was absolutely bonafide. The Id.Counsel for the assessee submitted that merely for the reason that wrong assessment year has been mentioned in Form No.35 filed electronically, the appeal of the assessee was dismissed by the CIT(A) as infructuous. The Id.Counsel for the assessee further submitted that in so far as other columns mentioned in Form No.35 viz. appeal details, which includes amount of income assessed, total addition of income, etc. the amounts have been correctly recorded. The CIT(A) has dismissed the appeal of assessee by taking a hyper-technical view in mentioning wrong assessment year in Form No.35. The Id.Counsel for the assessee prayed that the assessee would diligently pursue the appeal before the CIT(A) if an opportunity is granted and the appeal is restored back to the CIT(A) with appropriate directions.

3. Shri S.N.Kabra representing the Department supported the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that the CIT(A) has categorically mentioned in the impugned order that there is no provision to revise the Form No. 35 electronically.

4. Both sides heard, impugned order examined. A perusal of Form No 35 filed before CIT(A) electronically reveals that against the column of assessment year, 2014-15 has been mentioned instead of 2012-13. In so far as other details viz. the order against which appeal is filed, amount of income assessed, total addition, etc.

the same are purportedly in order. The CIT(A) dismissed the appeal as infructuous merely for the reason that wrong assessment year has been mentioned in Form No.35.

5. We are of the considered view that the CIT(A) has taken a pedantic and hyper-technical view of the punching error in mentioning wrong assessment year in Form No.35. It is a well settled law that when substantial justice and technical considerations are pitted against each other, the cause of justice deserves to be preferred. The rules of procedure are meant as hand made of justice for attaining of justice in an orderly manner. It is a trite law that where the rules result in injustice, absurdity or travesty of its purpose the Courts give it a go by. Thus, taking into consideration, entirety of facts and the larger cuase of substantial justice, we deem it appropriate to restore this appeal back to the file of CIT(A) for deciding the appeal on merits after affording reasonable opportunity of hearing to the assessee in accordance with law. The CIT(A) shall allow the assessee to rectify the error in mentioning correct assessment year in Form No.35 electronically by filing revised form or manually, if former is not practically feasible.

6. In the result, appeal by the assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Tuesday the 12th day of April, 2022.

Sd/-

(OM PRAKASH KANT)

लखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 12/04/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai