

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.804/Chny/2022
निर्धारण वर्ष/Assessment Year: 2008-09

Vishwatej Developers Private
Limited, No.1, Timex Towers,
Subbaraya Avenue, C.P. Ramaswamy
Road, Alwarpet, Chennai 600 018.

Vs. The Assistant Commissioner of
Income Tax,
Company Circle V(2),
Chennai.

[PAN:AADCR8015N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R. Sivaraman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Mrs. M. Narmada, CIT
सुनवाई की तारीख/ Date of hearing : 31.01.2023
घोषणा की तारीख /Date of Pronouncement : 08.02.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) (NFAC), Delhi, dated 08.09.2022 relevant to the assessment year 2008-09.

2. Brief facts of the case are that the assessee is engaged in the business of real estate and construction and filed its return of income on 29.09.2008 admitting a loss of ₹.90,32,402/-. The return filed by the assessee was processed under section 143(1) of the Income Tax Act,

1961 ["Act" in short] on 24.08.2009. Subsequently, the case was selected for scrutiny and after following due procedure, the assessment was completed under section 143(3) of the Act dated 30.12.2010. Against the assessment order, the assessee filed a writ petition before the Hon'ble High Court of Madras and subsequently, the same was dismissed. The Hon'ble Madras High Court, while dismissing the writ petition, observed that if the assessee wishes to file a statutory appeal then the appellate authority shall exclude the period from the date of filing of writ petition till the receipt of certified copy of the aforesaid judgement while computing the limitation period. Subsequently, the assessee filed an appeal before the Id. CIT(A) on 01.10.2021 and submitted that there is no delay as per the judgement of the Hon'ble Madras High Court. The Id. CIT(A) has noted that the appeal is delayed by 10 years and eight months. However, after considering the facts and in view of the observations made by the Hon'ble Madras High Court, the delay in filing the appeal was condoned and admitted the appeal.

3. The Id. CIT(A), on verification of the appeal filed by the assessee through Form 35, some deficiencies were noted and the same were intimated to the assessee vide his letter dated 05.08.2022. The

deficiencies raised to the assessee were as under:

1. Tax on returned income not paid/particulars of payment not mentioned.
2. There is a mismatch between the assessment year for which the appeal is preferred and the assessment year that has been mentioned in the Hon'ble High Court order giving rise to the discrepancy. Clarification required.

The assessee has submitted before the Id. CIT(A) that the assessee filed loss return and hence there was no tax payable on returned income and attached revised Form 35 filed on 09.08.2022 correcting the column 8 with remarks 'Not Applicable'. The assessee has also stated that the assessment year mentioned in the Hon'ble High Court order is typographical error. After considering the submissions of the assessee, the Id. CIT(A) has noted that the assessee has filed fresh Form 35, which have been filed for the same appeal. Since there is no provision in the Income Tax Rules and Income Tax Act which allows to file two Form 35 for the same appeal, the Id. CIT(A) has held that in the event of fresh/corrected filing of Form 35, the previously filed appeal/Form 35 becomes infructuous. Accordingly, the appeal filed in Form 35 dated 01.10.2021 has become infructuous as fresh Form 35 has been filed on 09.08.2022 and thus, the Id. CIT(A) dismissed the appeal filed in Form 35 dated 01.10.2021.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee filed an appeal before the Id. CIT(A) in Form 35 on 01.10.2021. The Id. CIT(A), considering the same and pointed out some deficiencies and thereafter, the assessee rectified the mistake pointed out by the Id. CIT(A) and filed Form 35 again. It is not a fresh Form 35. Therefore, the Id. Counsel has submitted that the Id. CIT(A) has wrongly dismissed the appeal filed in Form 35 dated 01.10.2021 as infructuous and submitted that the same may be restored.

5. On the other hand, the Id. DR supported the order passed by the Id. CIT(A).

6. We have heard both the sides, perused the records and gone through the appellate order. The assessee has originally filed an appeal in Form 35 on 01.10.2021 before the Id. CIT(A). The Id. CIT(A) has pointed out certain deficiencies and the same were rectified by the assessee and filed Form 35 again. According to the Id. CIT(A), the Form 35 filed by the assessee on 09.08.2022 is a fresh one and Form 35 dated 01.10.2021 is not maintainable and become infructuous. In our opinion, the assessee has only rectified the deficiencies pointed

out by the Id. CIT(A) and it cannot be treated as fresh Form 35. Therefore, the Id. CIT(A) was not correct in treating 2nd Form 35 dated 09.08.2022 as fresh for separate appeal and dismissed the first Form 35 dated 01.10.2021 as infructuous. In view of the above, we direct the Id. CIT(A) to consider Form 35 dated 09.08.2022 as substitute for Form 35 filed on 01.10.2021 for the purpose of rectifying the deficiencies and thereby, the Id. CIT(A) shall pass order on merits of the same by affording an opportunity of being heard to the assessee.

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

Order pronounced on 8th February, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 08.02.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR &
6. गार्ड फाईल/GF.