आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

(Conducted Through Virtual Court)

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER

ITA No.300/RJT/2017
Assessment Year :2013-14

LRs Management K/S (As foreign commercial manager/ agent of Principal Freight Beneficiary, Torm A/S) Correspondence Address: Interocean Shipping India P.Ltd. 301-Milestone P.N. Marg, Panchwati, Opp: Triveni Apartments Jamnagar 361 002.	Vs.	DCIT (International Taxation), Rajkot. Gujarat.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/**(Respondent)

Assesseeby :	Shri Manish Kanth, ld.AR
Revenue by :	Shri Shramdeep Sinha, ld.CIT-DR

सुनवाई की तारीख/**Date of Hearing : 13/02/2023**
घोषणा की तारीख /**Date of Pronouncement: 15/02/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order of the ld.Commissioner of Income-tax (Appeals)-13, Ahmedabad [hereinafter referred to as “the ld.CIT(A)”] dated 12.06.2017 passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Asst.Year2013-14.

2. At the outset, it was pointed out that the issue pertains to levy of penalty for concealing/furnishing inaccurate particulars of income as per the provisions of section 271(1)(c) of the Act and the assessee's appeal has been dismissed by the ld.CIT(A), as being invalid for the reason that the appeal had been filed manually while it was required to be filed electronically.

3. The ld.counsel for the assessee contended that as per the ld.CIT(A), CBDT had issued instruction vide notification No.S.O.637(E) dated 1.3.2016 mandating compulsory filing of the return w.e.f. 1.3.2016 for those required to furnish their return of income electronically. The ld.counsel for the assessee pointed out from the CIT(A)'s order, that it was pointed out to the ld.CIT(A) that the assessee was not required to file its return electronically since it had filed its return form VVR manually; that theld.CIT(A) dismissed this contention of the assessee stating that being a corporate assessee, it was required to file return of income electronically. Accordingly, the ld.CIT(A) held that the appeal before him having not been filed electronically, as mandated by the CBDT notification, the said appeal was invalid and accordingly treated as dismissed.

To this, the ld.counsel for the assessee contended that the assessee being an agent of a freight beneficiary, it was required to file voyage returns as per section 172(3) of the Act, which fact, he pointed out was noted in the assessment order also, and these returns were required to be filed in form VVR manually only. He contended therefore that the order of the ld.CIT(A) holding otherwise, and thus dismissing the assessee's appeal un-admitted for not having filed appeal electronically as per the CBDT notification in this regard was incorrect. He stated that the assessee was not

required to file its return of income electronically and therefore was not required to file appeal to the Ld.CIT(A) also electronically. The Ld.CIT(A) therefore had wrongly dismissed its appeal as unadmitted for not having filed appeal electronically.

4. Thereafter, he stated that even otherwise, on merit, the penalty levied needed tobe deleted since even on merits the addition made in the case of the assessee had been deleted bythe ITAT in entirety vide its order dated 30.10.2015 in ITA No.757/RJT/2014. The ld.DR fairly admitted to this fact.

5. We have heard both the parties. We find that the dismissal by the ld.CIT(A) of the assessee's appeal filed before it manually was highly unjustifiable and wasnot evenin accordance with the notification issued by the CBDT No.S.O.637(E) dated 1.3.2016 as referred to by the ld.CIT(A) himself. As per the said notification, as noted in para 1.2 of the CIT(A)'s order,all assesses whose returns were required to be filed electronically, had to file their appeals to the Ld.CIT(A) also electronically. The assessee had demonstrated that being an agent of freight beneficiary, voyage return which were required to be filed by the assessee in the return form VVR was required to be filed manually. The ld.CIT(A) has not controverted this contentions of the ld.counsel for the assessee. On the contrary, the ld.CIT(A) has countered by stating that the assessee being a corporate entity, it was required to file return electronically. The moot fact for determining the return form for filing return of income wasbeing a voyage return filed by the agent on behalf of the freight beneficiary, as per the provisions of section 172(3) of the Act, the filing of the return was to be in form VVR i.e. voyage return, as canvassed by the Ld.Counsel for the assessee both to the Ld.CIT(A)

and even before us. Without controverting this fact and finding it to be incorrect the Ld.CIT(A) clearly was in error in stating that being a corporate assessee the return should have been filed electronically. Therefore, dismissal by the ld.CIT(A) of the assessee's appeal, we find was based on incorrect appreciation of the facts. Even otherwise, mere mode of filing appeal - electronically or in physical mode ,alone should not take away the assessee's right to appeal, being just a technical/ procedural aspect that too not mandated by statute but by CBDT notification which has no persuasive value and is binding only on its Revenue Officers.. Therefore also the order of the ld.CIT(A) dismissing the assessee's appeal as not admitted is set aside.

6. On merits of the case, it is an admitted fact that the addition on which penalty was levied under section 271(1)(c) of the Act was deleted by the ITAT. We have noted from the assessmentorder, and copy of the penalty order before us that the assessee, being an agent of freight beneficiary M/s LR2 Management K/s -Denmark, had filed various voyage final returns under section172(3) of the Act without paying freight taxes. The assessee had claimed DTAA benefit vis a vis Denmark for the said purpose, but the AO held that the assessee had wrongly claimed DTAA benefit and accordingly withdrew the same. Thus, 7.5% of the total freight earned in India by the assessee was treated as its taxable income amounting to Rs.1,76,71,602/- and penalty levied on the same for having concealed/furnishing inaccurate particulars of income. The ITAT passed order in ITA No.757/RJT/2014 dated 30.10.2015 holding that profits embedded in the freight receipts were not taxable in India and deleted the demand raised on the assessee.

7. Since the quantum addition stands deleted by the ITAT in the above order, there remains no basis for levy of penalty under section 271(1)(c) and therefore the same is directed to be cancelled. The grounds of appeal of the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 15th February, 2023 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 15/02/2023