

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 4/JP/2023
निर्धारणवर्ष/Assessment Year :2014-15

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| Shri Mahesh Agarwal E-9, Nulite Colony, Tonk Road Jaipur – 302 018 | बनाम Vs. | The ACIT Circle-6 Jaipur |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABHPA 4131 G | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Shyam Sunder Goyal, FCA
राजस्व की ओर से / Revenue by: Smt. Runi Pal, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 01/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 28 /03/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 15-12-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2014-15 wherein the assessee has raised the following grounds of appeal.

1. Under the facts and circumstances of the case the Ld. CIT (A) has grossly erred in deciding the appeal ex-parte, without providing sufficient opportunity to appellant, here the Ld. CIT (A) ought to have decided the appeal on merits instead of dismissing the appeal for non-attendance.

2. The Ld. CIT (A) has grossly erred in law and on facts in not accepting the manual appeal of the assessee and dismissing the same as unrest only due to the reason the appeal has not been filed online, which was beyond control to the assessee due to some technical reasons. Hence the appeal so dismissed by the Ld. NFAC is being totally contrary to the provisions of the law and facts on the record and hence kindly to be directed to treat the same as valid appeal.

3. Under the facts and circumstances of the case the Ld. NFAC was not justified in confirming the addition as made by Ld. AO of Rs. 21,62,281/- on account of long term capital gain on equity shares,

4. Under the facts and circumstances of the case the Ld. NFAC was not justified in confirming the addition as made of Rs. 135737/- on account of commission u/s 69C.

5. The Ld. NFAC has grossly erred in confirming the addition as made by Ld. AO on the basis of statement recorded of the persons which are not concern with the company which shares have been traded.

6. The Ld. NFAC has grossly erred in confirming the addition on account of bogus long term capital gain u/s 10(38) and Commission u/s 69C without having any corroborative material on record against the complete valid chain of documents as submitted by the assessee,

7. The Ld. NFAC has grossly erred in confirming the addition as made by Ld. AO by denying opportunity of cross examination of the persons (witness) on which recorded statements are the basis of addition though the Apex courts verdict in ANDMAN TIMBER strongly recommended such opportunity of cross examination.

8. The Ld. NFAC has grossly erred in confirming the action of LD AO of making the addition of Long Term Capital Gain as Unexplained Income U/s 68 and commission U/s 69C despite off the assessee has followed complete procedure as described U/s 10(38) of the Act

9. The Ld. NFAC has grossly erred in confirming the action of Ld AO for charging Interest U/S 134A, B and C of the Act.’’

2.1 Apropos Ground No. 1 to 9 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.1 The matter has been considered. As per ITBA records, the appeal has not been filed electronically by the appellant. Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioner of Income Tax (Appeals) with effect from 01-03-2016. The Board vide Circular No. 20/2016 issued vide F.No.279/Misc./M-54/2-16/ITJ dated 26-05-2016 pertaining to E-filing of appeals: Extension of time limit-reg, extended the window for filing e-appeals which were due to be filed by 15-05-2016 to 15-06-2016. It is seen from the records that the appeal of the appellant has been filed against the order u/s 143(3) dated 16-12-2016 in paper form on 12-01-2017 whereas the same was required to be e-filed as per the procedure laid down in Rule 45. The case also does not fall within the extended time limit as per Board's Circular referred to above.

3.2 However, it is clarified that this order shall not prejudice the decision which may be taken in respect of electronically filed appeal against the same order alongwith application for condonation of delay which shall be treated as separate, belated appeal and shall be decided as per law. Accordingly, the appeal filed by the appellant is treated as non-est

4. In the result, the appeal of the appellant is treated as dismissed for statistical purpose.”

2.2 During the course of hearing, the main emphasis of the Id. AR of the assessee was that the Id. CIT(A) dismissed the appeal of the assessee on the ground that the appeal was not filed online which was beyond the control of the assessee due to technical reason and he further submitted that the appeal was

dismissed by the ld. CIT(A) ex-parte without providing sufficient opportunity to the assessee. Hence, the ld. AR prayed that the ld. CIT(A) should be directed to treat the appeal of the assessee as valid appeal.

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A)

2.4 We have heard both the parties and perused the materials available on record. The crux of the issue is that the assessee has filed the appeal manually but simultaneously not filed the appeal electronically. Hence, ld. CIT(A) treated the manual appeal filed by the assessee as non est and dismissed the same. The Bench noted that similar type of issue was considered by the ITAT Mumbai Bench in the case of **All India Federation of Tax Practitioners vs ITO (E)-1)2_**, **Mumbai in ITA No. 7134/Mum/2017 vide order dated 4-5-2018** wherein the Bench has restored the matter back to the file of ld. CIT(A) by holding as under:-

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of Income Tax Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1-3-2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e. Income Tax Act, 1961.

As per the facts of the present case, the assessment in the above case was completed under section 143(3) of the Income Tax Act 1961. However the assessee has filed appeal before learned Commissioner (Appeals) in paper form as prescribed under the provisions of Income Tax Act 1961 within the prescribed period of limitation. But the same was dismissed by learned Commissioner (Appeals) by holding that assessee had not filed appeal through electronic form, which is mandatory as per Income Tax Rules 1962.

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After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of '*State of Punjab v. Shyamalal Murari & Ors.*' reported in *AIR 1976 (SC) 1177* has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgment reported as *AIR 2005 (SC) 3304* in the case of '*Rani Kusum v. Kanchan Devi*,' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgment of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations.

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in *Appeal ITA No. 6595/Del/16* in case titled *Gurinder Singh Dhillon v. ITO* had restored the matter to the file of learned Commissioner (a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with learned Commissioner (Appeals), therefore in that eventuality the learned Commissioner (Appeals) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner.

Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of learned Commissioner (Appeals) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Learned Commissioner (Appeals) is further directed to consider the appeal filed by the assessee on merits

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by passing a speaking order. Resultantly, we allow the appeal filed by the assessee.

7. In the net result the appeal filed by the assessee is allowed.”

In view of the above decision of ITAT Mumbai Bench in the case of All India Federation of Tax Practitioners vs ITO (supra), assessee is directed to file the appeal electronically before the Id. CIT(A) who will pass the afresh speaking order on merit. Thus the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 28 /03/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

दिनांक / Dated:- 28 /03/2023

*Mishra

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

1. The Appellant- Shri Mahesh Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- The ACIT. Circle-6, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 4/JP/202)

आदेशानुसार / By order,

Asstt. Registrar