

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1378/Chny/2023
निर्धारण वर्ष /Assessment Year: 2018-19

Rathinasamy Pushpaveni,
Rohini Garden,
Azhagapuram Pudur,
Salem – 636 016.
[PAN: BXXPP-0274-J]

The Income Tax Officer,
Vs. Ward-1(1),
Salem.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

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

: Shri N.V. Lakshmi, Advocate
: Shri ARV Srinivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 25.04.2024

घोषणा की तारीख /Date of Pronouncement

: 30.04.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 26.09.2023 against the order u/s. 271D of the Act passed by Ld. Assessing Officer [AO] on 26.09.2019. The grounds raised by the assessee are as under:

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"1. The Commissioner of Income-tax (Appeals) is not justified in dismissing the appeal filed on 24-02-2023, refusing to condone delay of 344 days, while it was filed ear after receipt of an order dated 10-01-2023, passed by Principal Commissioner I Income-tax under section 264.

2. Commissioner (Appeals) ought to have recognized that a petition dated 23-05-2022 for remedy under section 264 had been filed on 16-03-2022 against the penalty) order passed under section 271D on 16-03-2022.

3. While sufficient cause explained for delay in filing the appeal has been discussed by the appellate order, its Para 8.3 is not factually correct in stating that no reason was filed.

4. Besides each assessment year being separate, returns of income filed for three years within time permitted under section 139(4) also should not have been considered to treat the assessee as a habitual defaulted.

5. Commissioner (Appeals) ought to have follows the other decisions relied by the assessee to justify filing an appeal under section 246 after refusal of petition under section 264; citations in cases of dissimilar facts are inapplicable.

6. Identify and permanent Account Number of prayer, genuineness of transaction and sufficiency of consideration for sale of immovable property should have made the Commissioner cancel the penalty, more so while receipts in installments were to meet cost of construction building and not for transfer.

7. Commissioner (Appeals) ought to have recognized that a substantial part of sale consideration was received through bank, evidenced by registered document and that generation of black money was not involved, as decided by Income Tax Appellate Tribunal, Chennai Bench on 30-08-2023 in Shree Dhevi Associates v Additional Commissioner of Income-tax, Salem (ITA 569/Chny/2022)."

2. All the above seven grounds of appeal are revolving on the principal issue of non adjudication of assessee's appeal by the Ld. CIT(A) on the premise of the same being late and that the assessee

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had not succeeded in its revision petition u/s. 264 of the Act. Accordingly, all the seven grounds are adjudicated together.

3. Coming to the brief factual matrix of the case are that an order u/s. 271D of the Act dated 16.03.2022 for A.Y 2018-19 was passed imposing a penalty of Rs. 5,00,000/- for violating provisions of Section 269SS of the Act. Aggrieved by the impugned order, the assessee filed a revision petition u/s. 264 of the Act before the PCIT on 23.05.2022. The said petition was disposed off vide order dated 10.01.2023 dismissing assessee's revision petition. The assessee proceeded to file an appeal before the Ld. CIT(A) on 24.02.2023. The Ld. CIT(A) noted that there is an inordinate delay of 315 days from 17.03.2022 till 22.03.2023 in filing the appeal without any satisfactory reasons. The Ld. CIT(A) relying upon judicial citations including those of jurisdictional High Court dismissed the appeal of the assessee.

4. The Ld. A.R of the assessee argued that the argument taken by the Ld. CIT(A) of not filing any justified reasons for delay are not correct. It was submitted that during the course of first appellate proceedings, the assessee had filed an affidavit and the same has been extracted by the Ld. CIT(A) on page 11 of the appellate order and hence it is not a case where no justification was tendered for the delay in filing appeal. The Ld. A.R of the assessee accordingly argued for

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being given an opportunity to argue its case before the first appellate authority. It was submitted by the Id. A.R that its case is fully covered by the decisions of jurisdictional High Court as well as this Tribunal.

5. The Ld. D.R vehemently supported the order of the Ld. CIT(A) in view of the provisions of Section 264(4) of the Act holding that once the assessee resorts to revisionary provisions, it loses its rights to contest the matter further before appellate authorities under the Act.

6. We have heard the rival submissions in the light of facts available on record, arguments put forth by both the parties and the judicial ratios laid down on the matter. It is noted that Hon'ble High Court of Madras in the case of CIT vs. D.Lakshminarayanapathi [2001] 119 Taxman 390 (Mad) has held that invoking revisional jurisdiction by an assessee and being unsuccessful thereof cannot be a bar upon him to file an appeal. Similar views were taken by this Tribunal *in ITA No.773/Chny/2023 dated 07.02.2024 in the case of PK Krishnamurthy vs. ITO for A.Y 2013-14* placing reliance upon the order of the jurisdictional High Court, supra. Relevant portion of the order of the Tribunal are reproduced hereunder:

7. I have heard rival contentions and gone through facts and circumstances of the case. I noted that the assessee has waived his right of appeal in this case by filing revision petition u/s.264 of the Act vide letter dated 11.06.2016 wherein he narrated as under:-

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"I am submitting the Petition u/s 264 of the I.T.Act 1961 in duplicate. The fees for Rs.500/- was paid on 22.04.16 and the challan is enclosed in the paper book page no:9. I am waving my right of appeal.

Kindly Acknowledgement the Petition u/s 264 of the I.T.Act 1961 and oblige."

No doubt, the assessee vide letter dated 11.06.2016 has waived his right of appeal but Hon'ble Madras High Court in the case of CIT vs. D. Lakshminarayanapathi, supra has considered this issue and held that the provisions dealing with appellate jurisdiction do not bar an appellant from invoking the appellate jurisdiction for filing of appeal before CIT(A), even though the assessee had invoked revisional jurisdiction u/s.264 of the Act. The Hon'ble Madras High Court considered this issue and held as under:-

1. Though there is no limitation on the exercise of the appellate power in the statute on the ground that the assessee had invoked the revisional power unsuccessfully, it is contended for the Revenue that such a limitation should be read into the provision dealing with appeals under the Income-tax Act. There is no provision in the Act in express terms, which supports the arguments so advanced by the Revenue. It is not disputed that the provisions dealing with the appellate authorities do not bar an appellant from invoking the jurisdiction, if he had invoked revisional jurisdiction, even though for invoking revisional jurisdiction, it is a pre-condition that the appellate jurisdiction should not have been invoked. 2. The argument advanced before us is that by inferential reasoning we should hold that if there is a limitation on exercise of revisional power a similar limitation should be read into the exercise of the appellate power. It does not require any authority to hold that it is not the province of the court to rewrite the law on the ground that the provision should have been worded in a different manner in order to make it seemingly consistent with some other provision. Moreover, it is wholly unnecessary for Parliament to impose the same kind of restriction for invoking different kinds of jurisdiction. It is open to the law-maker to provide more than one remedy to the aggrieved party and so long as such remedies are available, the aggrieved parties can certainly invoke them. 3. The Tribunal has rightly held that the assessee, notwithstanding his unsuccessful effort at having the order revised, could still file an appeal as invoking the revisional jurisdiction could not constitute a bar to the filing of an appeal. It is for the Legislature to impose such a bar if it considers it necessary to do so.

4. We, therefore, find no error in the order of the Tribunal. We answer the question as to "whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Appellate Assistant Commissioner was justified in entertaining the assessee's appeal against the assessment even though the Commissioner of Income-tax had passed an order under Section 264 against the assessee and holding that the provisions of Section 154 were applicable and a revision was not barred by

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limitation" in favour of the assessee and against the Revenue. No costs.

As the issue is covered by jurisdictional High Court, respectfully following the same, I set aside the order of CIT(A) holding the assessee's appeal as not-maintainable and direct him to re-decide the appeal as per law on merits. In term of the above, appeal of the assessee is allowed for statistical purposes."

7. In respectful compliance to the order of Hon'ble jurisdictional High Court in the case of CIT vs. D.Lakshminarayanpathi, supra, the order dated 26.09.2023 of Ld. CIT(A) holding that the assessee's appeal is not maintainable, is set aside with the directions to re-decide the appeal as per law, after condoning the delay in filing the appeal.

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

Order pronounced on 30th April, 2024.

Sd/-

(यस यस विश्वनेत्र रवि)

(SS Viswanethra Ravi)

न्यायिक सदस्य / Judicial Member

Sd/-

(श्री अमिताभ शुक्ला)

(Amitabh Shukla)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 30th April, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF