

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT  
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.663/Bang/2024
Assessment Years : 2008-09

Manohars Catering Number 666, Indiranagar 1 <sup>st</sup> Stage, Bengaluru-560 038.  <b>PAN – AALFM 1212 B</b>	Vs.	The Asst. Commissioner of Income Tax, Circle-1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri Raghavendra Chakravarthy, C.A
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	16.05.2024
Date of Pronouncement	:	04.06.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the office of the Addl/JCIT(A)-1, Coimbatore dated 12/02/2024 in DIN No. ITBA/APL/S/250/2023-24/1060795551(1) for the assessment year 2008-09.

2. Before we take up the specific issue raised by the assessee in the ground of appeal, it is necessary to take a note of history of the case in brief, which is detailed as under:

S.No.	Particulars	Date
1	Assessment order was passed u/s 143(3)	24/12/2010
2	Appeal before the Id. CIT(A)	15/12/2011
3	Ld. CIT(A) order	30/01/2018
4	The above order was not challenged by the assessee	NA
5	The assessee filed fresh appeal against the assessment order dated 24/12/2010	31/05/2019
6	Ld. CIT(A) order against the fresh appeal	12/02/2024

3. The Id. CIT(A) has dismissed the appeal filed by the assessee dated 31/05/2019 vide order dated 12/02/2024 by holding that the appeal was already decided by his predecessor dated 30/01/2018 and there is no provision under the Act to file another appeal against the same assessment order. As such, the Id. CIT(A) held that the appeal filed by the assessee dated 31/05/2019 vide order dated 12/02/2024 is non-maintainable. The relevant finding of the Id. CIT(A) in the order dated 12-02-2024 is reproduced as under:

“5.

*2 The appellant has already filed an appeal against the assessment order under section 143(1) passed by the ACTT, Circle-1 (1) Bangalore on 24-12-2010. The CIT (A) has decided/dismissed this appeal in ITA NO 94/CIT(A)1/Br/14-15/AY 2008-09 on 30/01/2018. The appellant cannot file another appeal against the same order before another first appellate*

*authority. If the appellant thinks the order in ITA NO 94/CIT(A)1/Br/14-15/AY 2008-09 on 30/01/2018 is not correct the appellant has to file an appeal before the ITAT. The CIT(A) cannot recall its order and can take a fresh decision only if the ITAT sets it aside to the CIT(A) for reconsideration. There is no prima-facie mistake in the order that can be rectified u/s154.*

*5.3 The second set of appeals filed against the assessment order before the first appellate authority is infructuous and not maintainable. In the result, the appeal is treated as Dismissed in limine.”*

4. The assessee against the order of the Id. CIT(A) dated 12/02/2024 has preferred an appeal before us.

5. It was contended by the Id. AR that the fresh/ second appeal was filed before the Id. CIT(A) as per the advice of Id. CIT(A) vide dated 18/06/2018. However, on question posted by the Bench, whether the order passed by the Id. CIT(A) in the second appeal as discussed above is maintainable under the provisions of law, the Id. AR fairly conceded that such order is not maintainable and, therefore, the appeal does not lie before the Tribunal.

6. Admittedly, the first appellate order dated 30/01/2018 was not challenged by the assessee under the bona-fide belief that the assessee has filed another appeal. If assessee wishes to challenge such order dated 30/01/2018, he can do so, as per the provisions of law. The Id. DR also submitted that the appeal filed by the assessee against the second appellate order is not maintainable. In view of the above and after considering the facts in totality, we hold that the appeal filed by the assessee before us against the order of Id. CIT(A) dated 12/02/2024 is *non-est* and not maintainable. Accordingly, we dismiss the same as infructuous.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in court on 4<sup>th</sup> day of June, 2024

Sd/-

**(GEORGE GEORGE K)**  
Vice President

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore,  
Dated, 4<sup>th</sup> June, 2024  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore