



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'C' BENCH, PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND

SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1050/PUN/2024

निर्धारण वर्ष / Assessment Year : 2016-17

M/s Rothe Erde India Pvt. Ltd.

429, At Post: Gonde,

Village: Wadiwarhe,

Igatpuri, Nashik-422403.

PAN: AADCR3029G

..... अपीलार्थी / Appellant

बनाम / V/s

Principle Commissioner of Income Tax,

Nashik.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by: Ms Chandani Shah ['Ld. AR']

Revenue by: Mr Satyajit Mandal ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 14/08//2024

घोषणा की तारीख / Date of Pronouncement : 23/08/2024

आदेश / ORDER

Per G. D. Padmahshali, AM;

The aggrieved appellant instituted this appeal against the revisionary order of Principal Commissioner of Income Tax, Nashik-1 [from now 'Ld. PCIT'] passed u/s 263 of the Income Tax Act, 1961 [from now 'Act'] which set-asides the original order of Assistant Commissioner of Income Tax, Circle-1, Nashik [from now 'Ld. AO'] passed u/s 143(3) r.w.s 144C of the Act anent to the assessment year 2016-17 [from now 'AY'].



2. A cursory look at the appeal memo reveals that, the appellant is a successor company of 'Berco Undercarriages India Pvt. Ltd.', which filed the present *undated and unsigned* appeal agitating the aforesaid revisionary order. The Registry besides bringing the aforesaid fact/defect to the notice of appellant at the time of filing of appeal did also issue defect notice dt. 21/05/2024 clearly intimating the defect to be rectified. The case thereafter listed for hearing first time on 04/07/2024. On the ground of compilation of paper book vide letter dt. 01/07/2024 the appellant sought adjournment; the bench accordingly adjourned the hearing to 14/08/2024 also forewarning dismissal of appeal in the event of failure on the part of appellant to rectify the defect by that date.

3. During the course of this scheduled hearing, record revealed us that there was no positive compliance from the appellant as it did fail to rectify former defect as intimated to it on earlier two occasions. The aforesaid conduct of the appellant *prima-facie* exhibits its motive to delay the proceedings and circumvent the adjudication till the hearing of the case turns-up before celestial constitution thus making the mockery of the proceedings.

4. The question as to *'whether appellate authority can proceed to adjudicate the issue on merits when appeal is defective or incomplete or*



not in the manner prescribed u/s 253(6) of the Act r.w.r. 12 of Income Tax Appellate Rules, 1963 [from now 'ITAT-Rules']?' finds an answer in the judgement of Hon'ble Karnataka High Court rendered in case of '*Inspecting Asstt. Commissioner Vs KB Nagarala*' [1987, 162 ITR 170 (Kar)]' wherein their Hon'ble lordship vide para 9 held as under;

"An Appellate Authority under the act or under any enactment can examine the merits only when it finds that the Appeals fled before it are competent and not otherwise. When once the Tribunal found that the appeals were incompetent, it should have refrained from dealing with the merits and expressing any opinion on any of the questions raised by the respondents in support of their appeals. From this, it follows that the Tribunal committed an error of law in dealing with the merits....."

5. Following the aforestated judicial precedents, the Hon'ble jurisdictional High court in '*JEM Exporter Vs UOI*' [2023, 153 Taxmann.com 80 (Bom)] held that; if the appeal is defective for non-production of a certified copy, failure to deposit, or ***incorrect signatures***, no order on merits can be passed. Therefore, an order passed on merits turning blind eye to the defects by the appellate authority is irregular thus liable to be set-aside.

6. In given facts & circumstances of present case/appeal and in view of the former judicial precedents, it is abundantly clear that, we cannot proceed to adjudicate the issue on merits as this appeal deserves dismissal *in-limine* as it lost its sanctity in view of section 253(6) of the Act r.w.r rule 12 'ITAT-Rules' which empowers the Tribunal to reject the memorandum of appeal if it is not in prescribed form.



7. The binding decision of Hon'ble Jurisdictional High Court rendered in '*Bharat Industries Vs State of Maharashtra*' [1995, 98 STC 417 (Bom)], also strengthens aforesaid power of Tribunal with a rider that; an appeal is liable to be dismissed *in limine* only when appellant fails to rectify the defect/omission even after availing reasonable opportunity, and not otherwise.

8. In the extant case, admittedly this unsigned appeal was filed by the appellant way-back in May, 2024 and since then it remained uncertified *in-spite* of reasonable opportunity granted to it through defect notice dt. 21/05/2024 and direction of the bench on first scheduled hearing. Such defective appeal in view of section 253(6) of the Act r.w.r. 12 of ITAT-Rules, and former judicial precedents (*supra*) deserves to be dismissed *in-limine*, with a leave granted to file fresh appeal if so advised. We thus order accordingly.

9. In result, the appeal stands **DISMISSED in above terms.**

In terms of rule 34 of ITAT Rules, order pronounced in open court on this Friday 23rd day of August, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 23rd day of August, 2024.

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

1.अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr.CIT, -Concerned

4. The NFAC, Delhi/CIT(A)Concerned

5. DR, ITAT, 'C' Bench, Pune

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune