

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 331/Ahd/2022
Assessment Year 2018-19**

Prabodh Mohanlal Shah 296, Morning Glory Drive Monroe Township, New Jersey-08831, United States of America PAN: BJSPS5670J (Appellant)	Vs	Assistant Commissioner of Income Tax, Circle Int. Txn., Vadodara (Respondent)
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**Assessee Represented: Shri Tushar Hemani, Sr. Adv. &
Shri Parimalsinh B. Parmar, A.R.
Revenue Represented: Shri Purushottam Kumar, DR**

Date of hearing : 21-08-2024
Date of pronouncement : 18-10-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the order dated 14.06.2022 passed by Dispute Resolution Panel (hereinafter referred as DRP) rejecting the objection filed by the assessee as against the draft assessment order passed under section 144C(1) of the Income Tax Act, 1961 relating to the Asst. Year 2018-19.

2. Brief facts of the case is that the assessee is a Non Resident Indian residing in United States of America has shown Long Term Capital Gain of Rs.56,95,336/- from sale of residential house property in India and claimed deduction u/s. 54 of the Act. The assessee also offered Income from Other Sources and claimed deduction under Chapter VIA of the Act. The Assessing Officer passed draft assessment order dated 28.09.2021 assessing the capital gain at Rs.1,24,99,095/- adopting the circle rate as on 01.04.2021. The assessee challenged the draft assessment order before DRP. Ld. DRP rejected the objection filed by the assessee on the ground that the Form 35A was not signed by the assessee but by his Authorized Representative by observing as follows:

“6. Therefore, in view of the unambiguous definition of an "Agent" in the Act, a person authorized to appear before income-tax authority or the Appellate Tribunal in connection with any proceeding under the Act, u/s 288 of the Act cannot be treated as an agent as prescribed under Rule-4, Income-tax (Dispute Resolution Panel) Rules, 2009 as quoted above. Therefore, Ms. Riya Shah, CA who has signed Objection to the Draft Order cannot be considered as Agent of the assessee for the purpose of the Act. Moreover, the authorization issued by the assessee in favour of Ms. Riya Shah CA was issued to her prior to issue of Draft Order dated 28.09.2021 and in the authorisation issued by the assessee after issue of the Draft Order and submission of the Objection, Ms. Riya Shah CA is not a signatory to the authorisation, therefore, the authorisation relied upon by the AR cannot be considered authorisation issued in favour of Ms. Riya Shah, CA, for the purpose of proceedings before this Panel. The AR has not placed on record any copy of Objection signed by the assessee for the submission before the DRP either, though specifically requisitioned by this Panel.”

3. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. ORDER PASSED U/S 143(3) R.W.S. 144C(13) OF THE ACT IS BAD-IN-LAW.

2. The Hon'ble Dispute Resolution Panel, Mumbai not justified in rejecting the objections filed on a plea that Objection to the Draft Order is neither signed by the assessee nor Authorised person.

3. Ld. DVO has provided false information to Id. AO and Valuation report issued by Id. DVO is bad-in-law.

4. Addition made by ld. AO of Rs.1,19,00,627/- as long term capital gain on account of adopting imaginary value instead of fair market value of the property as on 01.04.2001

4. Heard rival submissions at length and perused the materials available on record. As against the draft assessment order, assessee filed its objection in Form 35A with relevant Annexures within the period of 30 days. However the Form was not signed by the assessee, since the assessee being an NRI not available in India at the time of filing of the above objection. It is further seen from the DRP's order that no opportunity was given to the assessee to rectify this mistake, but held that Form No. 35A signed by the Authorized Representative is not valid in law, thereby rejected the objection filed by the assessee. It is seen that the very same Authorized Representative who appeared before the A.O. in the assessment proceedings has signed the objections in the prescribed Form 35A which is a curable defect u/s. 292B of the Act. On perusal of the impugned order, the Ld. DRP has not given any opportunity to rectify the defect. Thus Form No. 35A signed by the Authorized Representative is only an irregularity which is curable u/s. 292B of the Act and not an illegality.

4.1. The Jurisdictional High Court in the case of Rajendra Kumar Maneklal Sheth (HUF) Vs. CIT reported in (1995) 213 ITR 715 wherein it was held that the appellate authorities has power to cure

the so called irregularity with regard to the signature in Form No. 35 as follows:

“It is apparent that the AAC has felt that the delay was required to be condoned considering the various judgments which were cited before him, particularly, In view of the fact that the assessee has submitted a revised appeal memo duly signed by him and has prayed that delay, if any, be condoned. This may impliedly mean that the first appeal memo was not duly signed by the applicant. In such circumstance, when the appellate authority has considered the fact that when the revised appeal memo was submitted by the assessee and after considering various decisions, it thought that it was a fit case for condoning the delay as the Department is not likely to suffer any loss or prejudice. The AAC has exercised his discretionary jurisdiction and has condoned the delay and admitted the appeal for adjudication on merits under s. 249(3). For condonation of delay, he has considered the facts stated by the applicant and also the case law cited before him. Further, by admitting the appeal for adjudication on merits, the Department is not likely to suffer any loss or prejudice. Hence, it cannot be said that the discretionary power exercised by the appellate authority in curing the so-called irregularity with regard to signature on the appeal memo, calls for any interference by the Tribunal, particularly when the fresh appeal memo duly signed by the applicant was submitted before it.”

4.2. Similarly, Delhi High Court in the case of Remfry & Sons Vs. CIT reported in (2005) 276 ITR 001 wherein it was held that irregularity is to be cured by giving opportunity of hearing to the appellant as follows:

“Appeal [CIT(A)]-Signing of appeal memo-Memorandum of appeal signed by Authorized Representative of firm-Rule 45 is a procedural rule-Law relating to procedures is to be construed liberally-It would be in the interest of Justice, fairness and equity to provide an opportunity to the assessee to rectify the irregularity committed in regard to compliance of procedural law-Memorandum of appeal signed by a duly authorized person who acts on behalf of the managing partner/partner can be taken as substantial compliance with the provisions of r. 45-Non-adherence of some part of r. 45 may not be a ground for rejecting the appeal and it would be more appropriate for the authorities concerned to grant an opportunity to the assessee to remove the defect-Said Irregularity was

curable and could be rectified on the date of filing of the appeal or even subsequent thereto as the appeal was admittedly filed within the period of limitation-Appeal is restored to the CIT(A) for hearing in accordance with law.”

4.3. Further Rule 16 of the ITAT Rules also Authorize the Memorandum of Appeal in Form No. 36 filed by an assessee can be signed by his Authorized Representative with valid authorization from the assessee. Thus in the interest of Principle of Natural Justice, we hereby set aside the order passed by the Ld. DRP and direct it to decide the objection filed by the assessee and pass order on merits by duly giving proper opportunity of hearing to the assessee. Since the case is set aside to the file of Ld. DRP, remaining ground nos. 3 & 4 are not adjudicated, since the same are on merits of the case.

5. In the result, the appeal filed by the Assessee is hereby allowed for statistical purpose.

Order pronounced in the open court on 18-10-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/10/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद