

आयकर अपीलीय अधिकरण, एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

S M C BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.539 & 540/Mds/2015

निर्धारण वर्ष / Assessment Years : 2003-04 & 2007-08

Shri N.A. Abuthahir,  
Gnanaguru Consultancy,  
No.121-A, East Car Street,  
Chidambaram – 608 001.

PAN : ADXPA 5890 N  
(अपीलार्थी/Appellant)

v. The Joint Commissioner of  
Income Tax,  
The Deputy Commissioner  
of Income Tax,  
Central Circle II(1),  
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.550, 551 & 552/Mds/2015

निर्धारण वर्ष / Assessment Years : 2005-06 to 2007-08

Shri N.N.A. Azeez,  
Gnanaguru Consultancy,  
No.121-A, East Car Street,  
Chidambaram – 608 001.

PAN : ADFPN 2914 C  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner  
of Income Tax,  
Central Circle II(1),  
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V.D. Gopal, Advocate

प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 03.07.2015

घोषणा की तारीख/Date of Pronouncement : 17.07.2015

**आदेश / O R D E R**

All the appeals of the two independent assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 28.11.2014. Since common issue arises in all these appeals, I heard the appeals together and disposing of the same by this common order.

2. Shri V.D. Gopal, the Ld.counsel for the assesseees, submitted that the CIT(Appeals) dismissed the appeals of the assesseees mainly on the ground that the representative of the assesseees has not appeared before him. The CIT(Appeals) has also found that the assesseees have not filed any material before him. According to the Ld. counsel, when an appeal was filed before the CIT(Appeals), he is expected to dispose of the same on merit irrespective of the fact whether the assessee or his representative appeared before him or not.

3. According to the Ld. counsel, merely because the representative of the assessee has not appeared before the CIT(Appeals), the assessee cannot be penalized. Therefore, in the interest of assessee, the CIT(Appeals) is expected to dispose of the appeal after calling for records from the Assessing Officer, on merit.

The Ld.counsel further submitted that an opportunity may be given to the assessee to argue the case on merit before the lower authority. The Ld.counsel placed his reliance on the judgment of Indore Bench of Madhya Pradesh High Court in Mahaveer Prasad Jain v. CIT (172 ITR 331) and submitted that for the failure of the counsel for the assessee to appear before the CIT(Appeals), the assessee cannot be penalized. The Madhya Pradesh High Court found that the appeal cannot be dismissed for default. According to the Ld. counsel, the assessee cannot be made to suffer for the negligence of his counsel. The Madhya Pradesh High Court, according to the Ld. counsel, placed its reliance on the judgment of the Apex Court in Rafiq v. Munshilal (1981) AIR 1981 SC 1400.

4. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the assessee has not filed any material before the CIT(Appeals). In the absence of material, the CIT(Appeals) confirmed the orders of the Assessing Officer. However, the Ld. D.R. fairly submitted that he has no objection if the matter is remitted back to the file of the Assessing Officer for reconsideration.

5. I have considered the rival submissions on either side and perused the relevant material on record. The CIT(Appeals) found

that the assessees have not appeared before him. Therefore, placing reliance on the decision of Delhi Bench of this Tribunal in CIT v. Multiplan (India) Pvt. Ltd. (38 ITD 320) and other judgments found that the assessees are not interested in prosecuting their appeals. The CIT(Appeals) has also found that the assessees have not filed any material before him so as to adjudicate the matter on merit. The fact remains that the CIT(Appeals) is a statutory authority and judicial power is conferred on him under the provisions of Income-tax Act to dispose the appeals arising out of the orders of the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) is expected to dispose of the appeals on merit after calling for records from the Assessing Officer. The CIT(Appeals), being the senior-most officer of the Department, cannot disown his responsibility by saying that the assessees have not filed any material before him. The CIT(Appeals), being the first Appellate Authority under the scheme of the Income-tax Act, has to call for the material filed before the Assessing Officer and dispose of the appeals on merit.

6. The Delhi Bench of this Tribunal in the case of Multiplan (India) Pvt. Ltd. (supra) treated the appeal as unadmitted since there was defect. In this case, the CIT(Appeals) has not treated the

appeals as unadmitted, neither any defect was pointed out by the CIT(Appeals) nor any defect memo was issued to the assessee. Therefore, at any stretch of imagination, the CIT(Appeals) cannot treat the appeals filed before him as unadmitted. Moreover, the appeal before the CIT(Appeals) is a statutory appeal as per provisions of the Income-tax Act. Therefore, there is no question of any admission. The assessee, as a matter of right, can file appeal before the CIT(Appeals) and the CIT(Appeals) is bound to dispose the same on merit. An authority, who has coterminous power as that of an original authority / assessing officer, cannot dismiss the appeal for non-prosecution. Otherwise, the power conferred on CIT(Appeals) to enhance the assessment would be meaningless. This Tribunal is of the considered opinion that the CIT(Appeals) has no power/authority to dismiss the appeal for non-prosecution.

7. The Income-tax Act proceeding is a peculiar one to assess the total income of the assessee and levy tax thereon. It cannot be equated with other proceedings before civil / criminal courts. Under the provisions of Income-tax Act, the assessee is expected to file return of income every year and if the Department made any addition to the total income, the assessee may take up the matter on appeal before the first Appellate Authority. Therefore, nothing

wrong if the assessee expects a fair and reasonable order from the CIT(Appeals), who is having coterminous power as that of assessing officer, on the basis of the material available on record. Furthermore, as rightly submitted by the Ld.counsel for the assessee, the assessee cannot be allowed to suffer for the negligence of his counsel. The Madhya Pradesh High Court in fact extracted the observation of the Apex Court in Rafiq v. Munshilal (supra) at pages 331 and 332 of the ITR, which is reproduced hereunder:-

"The disturbing feature of the case is that under our present adversary legal system, where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A. K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. May be we do

not know, he is better informed in this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter, which may discourage such a tendency, would it not bring justice delivery system into disrepute ? What is the fault of the party who, having done everything in his power and expected of him, has to suffer because of the default of his advocate ? If we reject this appeal, as Mr. A. K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission or misdemeanour of his agent. The answer obviously is in the negative. May be that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court, both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law."

8. In view of the above, this Tribunal is of the considered opinion that the CIT(Appeals) has to dispose the appeals on merit on the basis of the material available on record and that may be produced by the assessee before him. Giving one more opportunity to the assessee to produce necessary material before the assessing officer would not prejudice the interest of revenue. This Tribunal is of the considered opinion that giving one more opportunity to the assessee to produce necessary material would

definitely promote the cause of justice. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the assessing officers. The assessing officer shall reconsider the issue afresh in the light of the material that may be filed by the assesseees and thereafter decide the same in accordance with law after giving reasonable opportunity to the assesseees.

9. In the result, all the appeals of both the assesseees are allowed for statistical purposes.

Order pronounced on 17<sup>th</sup> July, 2015 at Chennai.

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 17<sup>th</sup> July, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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