IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2019

Coram

The Honourable DR.JUSTICE ANITA SUMANTH

W.P. No.6766 of 2019
& W.M.P.Nos.7566, 7565 of 2019

Arjun Krishna Kondamani ....Petitioner

/Vs/

1.Deputy Commissioner of Income Tax
Non-Corporate Circle-15(1)
121 Uttamar Gandhi Salai
Nungambakkam, Chennai-600034.

2.The Commissioner of Income Tax (Appeals)15
Ayyakar Bhavan
121, Uttamar Gandhi Road
Nungambakkam, Chennai-600034.

3.The Chief Commissioner of Income Tax(Appeals)
Aayakar Bhavan
121, Uttamar Gandhi Salai
Nungambakkam, Chennai-600034.

4.Principal Commissioner of Income Tax (Appeals)
Aayakar Bhavan
121, Uttamar Gandhi Salai
Nungambakkam, Chennai-600 034. ....Respondents

P R A Y E R: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorari calling for the records of of the 2nd respondent in ITA No.168/CIT(Appeal)-15/2016-17 for the Assessment year 2013-14 and quash the impugned order, dated 28.12.2018 dismissing the appeal of the petitioner for the assessment year 2013-14 in limine without proper appreciation of the facts and the law applicable.

For Petitioner : Mr.J.Balachander assisted by Ms.Kavitha & Mr.A.Gnanan Esther Dorothy

For Respondents : Mr.A.P.Srinivas, Senior SC

O R D E R

The petitioner challenges an order passed by the Commissioner of Income Tax(Appeals) (in short 'CIT(A)') dated 28.12.2018 for assessment year 2013-14.

2. Heard Mr.Balachander, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Senior Standing Counsel for the respondents.

3. The petitioner is an assessee on the file of the 1st respondent and suffered an order of assessment in respect of assessment year 2013-14, vide order dated 22.03.2016. He filed an appeal against the same before the CIT(A)/the 2nd respondent herein, filed manually on 28.04.2016.

4. Rule 45 of the Income Tax Rules, 1962 ('Rules') provide for the form of appeal to the CIT(A). With effect from 01.03.2016, the Rules stood amended to state, among other things that, any appeal to be filed before the CIT(A) in Form No.35, shall, in the case of a person who is required to furnish return of income electronically under Rule 12(3), be furnished electronically under digital signature. The Rule is extracted below:

Form of appeal to Commissioner (Appeals).

> 45.(1) A appeal to the Commissioner (Appeals) shall be made in Form No.35.
> (2)Form No.35 shall be furnished in the following manner, namely:-
> (a) in the case of a person who is required to furnish return of income electronically under sub-rule (3) of rule 12,-
> (i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
> (ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);
> (b) in a case where the assessee has the option to furnish the return of income in paper from, by furnishing the form electronically in accordance with clause (a) of sub-rule (2) or in paper form...

5. The petitioner, admittedly, has filed his return electronically. The appeal was however filed manually, in time and within the limitation provided under the Act. The appeal was

taken up for hearing by the CIT(A) on 10.10.2018, when the petitioner appeared before the Officer and made submissions.

6. The appeal records were called for and the docket sheet of the appeal proceedings reveals that the case was heard on 10.10.2018 and was reposted to 11.12.2018. On 11.12.2018, the order sheet reads that a written submission was filed, the case was heard, and the matter adjourned.

7. It appears that the CIT(A), has thereafter noted the position that the appeal had been filed on 02.05.2016 manually and thus, was defective in the light of Rule 45 of the Rules. A notice was thus issued on 11.12.2018 pointing out the aforesaid defect and calling for rectification thereof in the following terms.

> Rule 45 of the Tax Rules, 1962 mandates compulsory e-filing of appeals before the Commissioner of Income Tax(Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. The due date was extended upto 15/06/2016. It appears from this office record that you have filed appeal for the AY 2013-14 in paper Form-35 instead of e-filing.
>
> 2. In view of the above, your appeal is proposed to be treated as non-est.
>
> 3. In case you have filed your appeal electronically, the same may be kindly be brought to the notice of this office immediately along with a copy of such e-filed appeal, within 10 days of receipt of this notice, failing which your appeal will be treated as invalid and disposed of accordingly.

8. A reply was filed by the asseessee on 18.12.2018 as follows:

> With reference to notice dated 11.12.2018 in ITA No.168/CIT(A)/e-filling/16-17 in case of Arjun Krishna Kondamani in Appeal No.168/2015-16. I am instructed to submit as follows:
>
> 1.The appeal has been filed on 02/05/2016 in paper from (manual) and duly acknowledged by your office.
>
> 2.In your notice under Sec.250 of Income Tax Act 1961, you have stated that the appeal is proposed to be treated as non-est for which I am instructed to submit as under:

a.The appeal has been filled on 02/05/2016 and as per circular 20 of 2016 dated 26.05.2016 in F.No.279/Misc/m-54/2016/ITJ the Compulsory e-filling of appeals for Individuals were made operational only from 12/05/2016 and hence the appeal filed on 02/05/2016 in paper from is valid in terms of Rule 45 of IT Rules 1962 read with Circular No:20 dated 26/05/2016.

In view of the above circular you are requested to treat the appeal as valid and dispose the same in accordance with law.

9. It is in the light of the aforesaid submission of the assesser that the impugned order has been passed on 28.12.2018, dismissing the appeal of the petitioner, in limine and as invalid.

10. The amendment to Rule 45 is effective, 01.03.2016. However, the Central Bureau of Direct Taxes, in recognition of the position that assessees were not fully aware of the new procedure, had issued Circular No.20/2016 dated 26.05.2016. The Circular recognizes the lacunae in the e-filing procedures. It also admits that Electronic Verification Functionality for the verification of e-appeals was made operational only with effect from 12.05.2016 for individuals and from 19.05.2019 for other persons.

11. There were other issues as well including the prescription for word limit for grounds of appeal as well as the mapping of jurisdiction of the Appellate Commissioner. In recognition of the aforesaid difficulties, the time limit for application of the Circular was extended up to 15th June, 2016. E-appeals filed within the aforesaid extended period were to be treated as valid. The Circular is extracted below:

Subject: E-filling of appeals: Extension of time limit-regarding Rule 45 of the Income-Tax Rules, 1962, mandates compulsory e-filling of appeals before Commissioners of Income-

Tax(Appeals) with effect from March, 2016 in respect of persons who are required to furnish return of Direct Taxes(hereinafter referred to as the Board) that in some cases the papers who were required to e-file Form35 were unable to do so due to lack of knowledge about e-filling procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals were mad operational from 12th May 2016 for individuals and from 19th May, 2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioner of Income-tax(Appeals) were also a cause of grievance in some cases.

2. The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved in order to mitigate any inconvenience cause to the taxpayer on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time for filing of such e-appeals. E-Appeals which were due to be filed by 15th May, 2016 can be filed up to 15th June, 2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

12. I am to decide in the light of the aforesaid Circular, as to whether, the appeal filed manually by the petitioner on 28.04.2016 is to be treated as a valid appeal to be heard and disposed on merits.

13. Clearly, the amendment to Rule 45 is a continuation of the process of technological upgradation of the Income Tax Department. This process has commenced more than a several decade ago with various electronic features being introduced periodically into the Act and the Rules, such as, filing of returns, maintenance of records and now filing of appeals as well. While it is a laudable object, one cannot lose sight of the position that there are several difficulties that have been encountered both on the part of the Department as well as the Assessees in effecting such transition.

14. In the present case, the manual appeal has, admittedly, been filed on time. The CIT(A) has also heard the matter on merits on two(2) occasions and written submissions of the petitioner are available on record. In such circumstances, I am of the view that the statutory right of appeal granted to the petitioner, a substantive right, should not be whittling down by virtue of a procedural infirmity, admittedly, committed by it. Without it setting a precedent, I thus, direct the petitioner to comply with the provisions of Rule 45 within a period of three(3) weeks from today. Upon being satisfied with compliance thereof, the CIT(A) will take the appeal up for adjudication on merits without reference to limitation. Since the manual appeal has admittedly, been filed within time and upon payment of necessary fee, there is no necessity for the petitioner to remit the appeal fee yet again in respect of the

appeal filed electronically. Necessary instructions be issued in this regard by learned Standing Counsel to the Authorities. This writ petition is allowed in the aforesaid terms.

15. In the light of my conclusion as aforesaid, the impugned order is set aside. The appellate authority will pass appropriate orders on the e-appeal to be filed by the petitioner within a period of three(3) weeks after filing of the same in accordance with law and after hearing the petitioner. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.J.Balachander, Advocate Sr.35169
+1cc to Mr.A.P.Srinivas, Advocate Sr.35464

W.P. No.7475 of 2019

mp[co]
srg 22/07/2019