IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal No.428 of 2020

The Commissioner of Income Tax, Chennai ...Appellant/Respondent

.Vs.

Sri Vasavi Gold & Bullion (P) Ltd., Chennai-79 ...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 04.12.2019 passed by the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai made in I.T.A.No.326/Chny/2019 for the assessment year 2009-10. Against the order f the Deputy Commissioner of Income Tax, Corporate Circle 6(2), Chennai, made in ITA No.88/CIT(A)-15/2016-17 dated 28.12.2018 for the assessment year 2009-10.

For Appellant : Mr.J.Narayanaswamy, SSC
For Respondent: Mr.J.James for Mr.John Kennady

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) challenging the order dated 04.12.2019 made in I.T.A.No.326/Chny/2019 on the file of the Income Tax Appellate Tribunal, Chennai, 'B' Bench ('the Tribunal' for brevity) for the assessment year 2009-10.

2. The Revenue has filed this appeal by raising the following substantial questions of law :

> “1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the manual appeal filed by the assessee before the CIT(A) is valid appeal and e-appeal need not be filed

as mandated and thereby remitting the case back to the CIT(A) for disposal on merits ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in ignoring Rule 45 of the Income Tax Rules mandating filing of e-appeal with effect from 01.3.2016 and Board Circular No.20/ 2016 dated 11.7.2019 extending the time for filing of e-appeal only till 15.6.2016 ? And

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in condoning the delay in filing of appeal even though the assessee had failed to file any petition even for condoning the defect in non filing of e-appeal?"

3. We have elaborately heard Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.J. James, learned counsel appearing on behalf of Mr.John Kennady, learned counsel accepting notice for the respondent.

4. The respondent - assessee filed their return of income on 30.9.2009 for the assessment year under consideration. Though the assessment was completed initially, the assessment was reopened subsequently and it was finally concluded by assessment order dated 29.3.2016 under Section 143(3) read with Section 147 of the Act.

5. As against the said assessment order, the assessee filed an appeal on 25.4.2016 before the Commissioner of Income Tax (Appeals)-15, Chennai [for brevity, the CIT(A)] i.e well within the period of limitation of 30 days computed from the date of the said assessment order i.e 29.3.2016. Going by the said date, the period of limitation would expire on 28.4.2016. The appeal memorandum was kept pending in the office of the CIT(A) and was not taken up disposal till 12.12.2018. On 13.12.2018, the CIT(A) issued a notice to the assessee stating that in terms of Rule 45 of the Income Tax Rules, 1962 [for short, the Rules], it is mandatory and compulsory for filing the appeal only by way of e-filing with effect from 01.3.2016. This due date was extended upto 15.6.2016.

6. It appears from the office records of the CIT(A) that the assessee filed an appeal petition in Form No.35 instead of e-filing the appeal. Therefore, the CIT(A) proposed to treat the appeal as non est and called upon the assessee to state as to whether they filed any appeal electronically and if so, the same

might be brought to the notice of the office of the CIT(A) immediately along with a copy of such e-filed appeal within 10 days from the date of receipt of the said notice, failing which, the manual appeal filed would be treated as invalid and disposed of accordingly.

7. It has been stated in the order passed by the CIT(A) that the show cause notice was served on the assessee and that the assessee neither filed the e-appeal nor replied to the notice. Hence, the CIT(A), by order dated 28.12.2018, concluded that in the absence of any material placed by the assessee to successfully demonstrate that there was no negligence, inaction or want of due diligence involved in not filing the e-appeal, sufficient cause had not been established by the assessee for not filing the e-appeal and accordingly, the manual appeal filed by the assessee was dismissed in limine. Aggrieved by the same, the assessee preferred further appeal before the Tribunal and it was allowed by order dated 04.12.2019. Challenging the same, the Revenue is before us by way of this appeal.

8. Mr.J.Narayanaswamy, learned Senior Standing Counsel appearing for the Revenue has contended that the Tribunal erred in holding that the manual appeal filed by the assessee before the CIT(A) was a valid appeal and that the e-appeal need not be filed as mandated and therefore, the Tribunal erred in remanding the matter back to the CIT(A) for de novo consideration and for disposal of the appeal on merits. It is further contended that the Tribunal ought to have appreciated that Rule 45 of the Rules mandated the assessees to file only e-appeals with effect from 01.3.2016, which time limit was extended till 15.6.2016 vide Circular No.20/2016 dated 11.7.2019. It is also contended that the Tribunal ought to have held that the manual appeal filed by the assessee was non est in view of the embargo under Rule 45 of the Rules. It is further contended that the assessee cannot plead ignorance of law especially when they are assisted by professionals and that there was no reason for the Tribunal to interfere with the order passed by the CIT(A).

9. Per contra, Mr.James, learned counsel appearing on behalf of Mr.John Kennady, learned counsel on record for the respondent - assessee has sought to sustain the order passed by the Tribunal and contended that the manual appeal in Form No.35 was filed well within the period of limitation, that the CIT(A) did not intimate the assessee for over three years, that only on 13.12.2018, a notice was sent and that this aspect was rightly taken note of by the Tribunal while allowing the appeal filed by the assessee.

10. We have carefully perused the materials placed on record.

11. There can be no quarrel over the proposition that once the statutory rules mandate a particular procedure, the same shall be done in such a manner and not in any other manner. However, there are decisions of the Hon'ble Supreme Court, wherein it was held that procedural rules are only hand-mades of justice and if there is failure to adhere to the procedure and when the same is fitted against a statutory right of appeal, then such statutory right should not be abdicated for technical reasons.

12. We have perused the circular issued by the Central Board of Direct Taxes (CBDT) namely Circular No.20/2016 dated 26.5.2016 wherein it has been stated that Rule 45 of the Rules mandated compulsory e-filing of appeals before the CIT(A) with effect from 01.3.2016 in respect of persons, who were required to furnish the return of income electronically. The CBDT further took note of the cases of tax payers, who were required to e-file Form 35 and who were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. The said Circular further stated that the e-verification code (EVC) became operational for verification of e-appeals from 12.5.2016 for individuals and from 19.5.2016 for other persons. The CBDT also noted that word limit for filing grounds of appeal and mapping of jurisdiction of the CIT(A) were also a cause of grievance in some cases.

13. Therefore, the matter was examined by the CBDT and noting that while the underlying issues relating to e-filing of appeals had since been addressed and resolved, in order to mitigate any inconvenience caused to the tax payers on account of the new requirement of mandatory e-filing of the appeals, it was decided to extend the time limit for filing such e-appeals. In the light of the above, the CBDT directed that e-appeals, which were due to be filed by 15.5.2016, could be filed upto 15.6.2016 and that all e-appeals filed within this extended period would be treated as appeals filed in time. The CBDT further noted that in view of the extended window for filing e-appeals, taxpayers, who could not successfully e-file their appeal and filed paper appeals, were required to file an e-appeal in accordance with Rule 45 of the Rules before the extended period i.e. 15.6.2016 and that such e-appeals would also be treated as appeals filed within time.

14. Thus, as could be seen from the said Circular, there were technical issues in e-filing, which was introduced with effect from 01.3.2016 in addition to lack of knowledge on the part of the taxpayers about the e-filing procedure. More importantly, the EVC became operational for verification of e-appeals from 12.5.2016 for individuals and from 19.5.2016 for

other persons. Assuming that a person had e-filed their appeal well within the period stipulated under Rule 45 of the Rules, yet the appeal would not have been taken up for verification/ scrutiny till 12.5.2016/19.5.2016.

15. In the case on hand, admittedly, the assessee filed the appeal in Form No.35 in the office of the CIT(A) on 25.4.2016 well within the period of limitation. There were two options available to the office of the CIT(A), firstly, to refuse to accept the manual filing of the appeal citing Rule 45 of the Rules. The second option was to receive the appeal and then return the same to the assessee with a covering note stating that the relevant Rule mandates e-filing of appeal with effect from 01.3.2016. Unfortunately, the office of the CIT(A) did not exercise any one of these two options. Therefore, we can safely hold that the assessee was led to believe that their appeal was accepted by the office of the CIT(A).

16. The assessee was made known that the manual appeal filed in Form 35 would not be entertained only when the notice was issued by the CIT(A) dated 13.12.2018 and that too, after a period of three years. The contents of the show cause notice clearly show that in so far as e-filing of the appeals is concerned, the office of the CIT(A)/ jurisdictional CIT(A) was not aware as to whether the assessee filed any appeal electronically or not. This is precisely the reason as to why in the show cause notice, the assessee was informed to bring to the notice of the office of the CIT(A) as to whether they filed any appeal or not.

17. Thus, it appears that at the relevant point of time, the process of integration was not put in place. So far as courts and tribunals are concerned, if there is a defective appeal or an appeal has not been presented properly or there is deficit court fee or there is lack of jurisdiction, the appeal papers would be immediately returned with a memo giving the party an option to represent the papers after rectifying the defects. It also appears that at the relevant point of time, the office of the CIT(A) did not have any such procedure in place. Considering the peculiar facts and circumstances of the case, we are of the view that the manual appeal filed before the CIT(A) should be decided on merits and not to be thrown out on technicality and that too when the assessee was intimated after a period of three years that their manual appeal filed in Form No.35 was not acceptable.

18. When it is not disputed that there were several technical issues in e-filing of the appeals coupled with the fact that several assessees or their authorized representatives were not well acquainted with the procedure for e-filing of the

appeals, the benefit can be given in favour of the assessee especially when the right of appeal being a statutory right and valuable right and it should not be denied on technicalities. That apart, we note that the said Circular is a one time measure granted by the CBDT. Further, the case on hand also pertains to an order of assessment dated 29.3.2016 and the appeal was filed manually on 25.4.2016 when there were several technical issues in filing e-appeals apart from lack of knowledge in the procedure to file e-appeals.

19. Though Mr.J.Narayanaswamy, learned Senior Standing Counsel may be right in contending that the assessee should not take advantage of the said Circular, since the appeal memorandum along with certified copy of the assessment order was not returned to the assessee on time, but was kept pending in the office of the CIT(A), the assessee cannot be faulted for not availing the benefit of the said Circular. We are of the considered view that the Tribunal rightly allowed the appeal filed by the assessee and we find no reason to interfere with the order passed by the Tribunal.

20. In the result, the above tax case appeal is dismissed, the impugned order passed by the Tribunal stands confirmed and the substantial questions of law raised are answered against the Revenue. No costs.

Sd/-
Assistant Registrar (CJ Conf.)

//True Copy//

Sub Assistant Registrar

To
1. The Income Tax Appellate Tribunal, 'B Bench, Chennai.

2. The Commissioner of Income Tax, Chennai.

3. The Deputy Commissioner of Income Tax,
Corporate Circle 6 (2), Chennai.

+1cc to Mr.J.James, Advocate, S.R.No.42383

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