

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.432, 433 and 436 of 2020

The Commissioner of Income Tax,
Chennai ... Appellant/Respondent
in T.C.A.Nos.432 and 436 of 2020

The Principal Commissioner of Income Tax,
Non-Corporate Circle 8(1),
Nungambakkam,
Chennai ... Appellant/Respondent
in T.C.A.No.433 of 2020

Vs.

A.A.Antony ... Respondent/Appellant
in T.C.A.No.432 of 2020

Shri K.G.Srinivasan ... Respondent/Appellant
in T.C.A.No.433 of 2020

Shri Ravi Prabakar ... Respondent/Appellant
in T.C.A.No.436 of 2020

Prayer in T.C.A.No.432 of 2020

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.325/Chny/2019 dated 04.12.2019 passed by the Income Tax Appellate Tribunal, 'B' Bench, Chennai for the Assessment Year 2008-2009 and this appeal preferred against the Commissioner of Income Tax (Appeals)-15 Aayakar Bhavan, No.121, Mahatma Gandhi Road, Chennai 600 034 dated 28.12.2018 made in ITA.No. 334/CIT (A) - 15/2015-16 for the Assessmtn Year 2008-2009.

Prayer in T.C.A.No.433 of 2020

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.2128/Chny/2019 dated 10.12.2019 passed by the Income Tax Appellate Tribunal,

'D' Bench, Chennai for the Assessment Year 2009-2010 and this Appeal preferred against the Commissioner of Income Tax (Appeals) 9 No. 121, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034 dated 28.06.2019 made in ITA.No. 15/CIT (A) -9 /2016-2017 for the Assessment Year 2009-2010 and preferred against the Income Tax Officer, Non Corporate Ward 8 (2) Chennai 34 order dated 31.03.2016 made in PAN.No.AFUPS5572A for the Assessment Year 2009-2010.

Prayer in T.C.A.No.436 of 2020

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order made in ITA No.1153/Chny/2019 dated 02.01.2020 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the Assessment Year 2013-2014 and this Appeal preferred against the Commissioner of Income Tax (Appeals)-15, Aayakar Bhavan, No. 121, Mahatma Gandhi Road, Chennai 600 034 dated 27.12.2018 made in ITA.147/CIT(A)-15/2016-2017 for the Assessment year 2013-2014.

For Appellant in
T.C.A.Nos.432
and 436 of 2020 : Mr.J.Narayanaswamy
Senior Standing Counsel

For Appellant in
T.C.A.No.433
of 2020 : Mr.Karthik Ranganathan

For Respondent in
all the appeals : Mr.A.S.Sriraman

C O M M O N J U D G M E N T

[Common Judgment of the Court was delivered by T.S.SIVAGNANAM,
J.]

These appeals, at the instance of the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity), are directed against the order passed by the Income Tax Appellate Tribunal, Madras 'B' 'D' and 'A' Bench, Chennai respectively in ITA Nos.325/Chny/2018; 2128/Chny/2019; 1153/Chny/2019 dated 22.07.2019; 10.12.2019 and 02.01.2020 for the Assessment Years 2008-2009; 2009-2010 and 2013-2014 respectively.

2. Though the orders are individual orders passed in the appeals filed by the respondent / assessee, since the issue involved is identical in all these appeals, the same were heard together. The Substantial Questions of Law raised for

consideration in these appeals are as follows:

T.C.A.No.432 of 2020

"1. Whether on facts and in the circumstances of the case, the Tribunal was right in holding that there is no delay in filing of e-appeal by the assessee to CIT(A) and remitting the case back for disposal on merits by condoning the delay in filing of e-appeal before CIT(A).

2. Whether on facts and in the circumstances of the case, the Tribunal was right in holding that there is no delay in filing of e-appeal since the date of filing of belated e-appeal relates back to the date of filing of non est manual appeal.

3. Whether on facts and in the circumstances of the case, the Tribunal was right ignoring the Rr 45 of the IT Rules mandating filing of E appeal w e f 02.03.2016 and Board Circular 20/2019 dated 26.05.2016 extending the time for filing of e appeal only till 15.06.2016 and thereby condoning the delay in filing of first appeal.

4. Whether on 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 for condonation of delay with proper explanation before the CIT(A) "

T.C.A.No.433 of 2020

"1. Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal was right in condoning the delay in e-filing of appeal before Ld.CIT(A) and restoring the issues in appeal back to the file of the Ld.CIT(A) for adjudication on merits, disregarding the Board's Circular No.20/2016 dated 26.05.2016 wherein the Board extended the time limit for filing e-appeal before Ld. CIT(A) only upto 15.06.2016 in accordance with the Rule 45 of the Income Tax Rules, 1962."

T.C.A.No.436 of 2020

"1. Whether on facts and in the circumstances of the case, the Tribunal was right in holding that the manual appeal filed by the assessee before CIT(A) is valid appeal and eappeal need not be filed as mandated and thereby remitting the case back to CIT (A) for disposal on merits by erroneously holding that the delay in filing of eappeal can be condoned.

2. Whether on facts and in the circumstances of the case, the Tribunal was right ignoring the Rr 45 of the IT Rules mandating filing of E appeal w e f 01.03.2016 and Board Circular No.20/2016 dated

11.07.2019 extending the time for filing of appeal only till 15.06.2016.

3. Whether on 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 for condoning the defect in non filing of appeal before the CIT(A)"

3. We have elaborately heard Mr.J.Narayanasamy, learned Senior Standing Counsel and Mr.Karthik Ranganathan, learned counsel for the Appellant / Revenue and Mr.A.S.Sriraman, learned counsel for the Respondent / Assessee.

4. The short issue involved in these appeals is, whether the Commissioner Appeals could have rejected the appeals filed by the assessee against the order of assessment for the assessment years under consideration on the ground that they have not been 'e-filed' within the period of limitation and the prayer made by the assessee to reckon the date of filing as on date on which the appeal was actually filed. The Tribunal in the impugned order allowed the assessee's appeal by following a decision of a co-ordinate bench of the Tribunal in the case of South India Bottling Company Pvt., Ltd., in I.T.A. Nos. 710, 711 and 712/Chny/2019 dated 27.08.2019. The Tribunal after taking note of the said decision held that the assessee's case was squarely covered by the decision and allowed the appeals.

5. The procedure 'e-filing' of the appeals came into force with effect from 01.03.2016. As experienced by the Registry of this Court, when the Registry had permitted e-filing of cases, there were several technical issues faced by the Registry as well as the litigants and their respective counsels. Therefore, reasonable time has to be given for the system to settle down and the persons manning the system to get acquainted with the process of e-filing. In all probabilities, the Income Tax Department also faced such a situation, which necessitated Central Board of Direct Taxes to issue Circular No.20/2016, which reads as follows:-

" Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the tax payers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-

appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners 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 caused to the tax payers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15.05.2016 can be filed upto 15.06.2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

3. In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e., 15.06.2016. Such e-appeals would also be treated as appeals filed within time."

6. Taking note of the representations received and that the tax payers, who were required to e-file Form 35 were unable to do so, due to lack of knowledge about e-filing procedure and / or technical issues in e-filing extended the period for e-filing the appeals in accordance with Rule 45 till 15.06.2016 and such e-appeals were directed to be treated as appeals filed within time.

7. As prefaced earlier, the fact situation in all these cases may be slightly different and we take up the case in T.C.A. No.433 of 2020 as a lead case to note the facts.

8. The order of assessment was passed on 31.03.2016 and the assessee had filed the appeal manually on 19.04.2016. Subsequently, the Department had issued show cause notice on 17.08.2016, much prior to issuance of show cause notice, the assessee e-filed the appeal on 02.08.2016. Thus, if the Circular No.20/2016 is applied, the time stood extended till 15.06.2016 for e-filing the appeals and if the said date is reckoned, then, the CITA should take into consideration the date of e-filing, namely, 02.08.2016 and examined whether the assessee had sufficient cause for not being able to e-file appeal earlier, i.e., within the extended time up to 15.06.2016. However, for certain reasons assigned in the order, the CITA has dismissed all the appeals.

9. Mr.Kathik Ranganathan, learned counsel for the appellant is right in his submission that even without an application for condonation of delay, the delay could not have been condoned and assuming that the Tribunal was satisfied that a statutory right of appeal should not be foreclosed on technical grounds, ought to have remanded the matter to the CITA, with a direction to the assessee to file an application for condonation of delay to be considered on merits and in accordance with law. Thus, while seeking to sustain the order passed by the CITA and submitting that once the Rules have been amended and e-filing has been made mandatory, the assessee was bound to follow the same and the question of dispensing with such procedure cannot arise.

10. As observed earlier, the procedure which is to be adopted while seeking for condonation of delay, by applying the principles under Section 5 of the Limitation Act, party pleading for condonation, should place on record by way of affidavit or otherwise as to why the delay had occasioned.

11. Had the appeal been of the year 2020 before the CITA, our view would have been slightly different, however, we note that the appeals which were filed before the CITA were of the year 2016 and at the relevant time, Rule 45 stood amended and e-filing was made mandatory.

12. Taking into consideration the Circular issued by CBDT, which in our opinion, appears to be a one time measure, the substantive right of appeal should not be denied to the assessees on hand on a technical ground. However, we make it clear that this observation cannot be taken advantage by the assessees, as of now, when the procedure has been in vogue ever since the year 2016 and stood the test of time and in all probabilities, as of now, all teaching problems would have been solved. Therefore, bearing in mind the fact situation in the year 2016, we are of the view that the appeals need not have been rejected by the CITA on the ground that they were not e-filed within the period of limitation.

13. One more aspect which we had noted is that in the case of assessee in T.C.A.No.433 of 2020, the order of assessment was passed on 31.03.2016, limitation for filing the appeal before the CITA would expire on 30.04.2016 and an appeal filed beyond the said period was time barred. However, if Circular No. 20/2016 is made applicable, then, the time limit for filing the e-appeals stood extended upto 15.06.2016 and even going by the date for verification of e-appeals, it was made operational on 12.05.2016 for individuals, both these dates are well beyond the period of limitation in the case on assessee in T.C.A.No.433 of 2020.

14. Mr.Karthik Ranganathan, learned Standing counsel for the Revenue had submitted that the assessee may be sent back to the CITA to file an application for condonation of delay and the CITA may be directed to consider the same in accordance with law.

15. We are of the view that if we are to direct the assessee to adopt such a procedure, as argued by the learned standing counsel, it would be very harsh on the assessee, especially when the appeals are of the year 2016-2017 and even assuming if it is done, the contention which were advanced before us by Mr.A.S.Sriraman, learned counsel for the assessee would be once more again advanced before the CITA and ultimately, lead to another round of litigation on the issue of limitation alone, which we feel should not happen.

16. That apart, as observed earlier, the reprieve given to the assessee by the CBDT appears to be a one time measure and the benefit can be extended to the respondents / assessee and we find that there is no error committed by the Tribunal in exercising discretion in favour of the respondents / assessee

17. Apart from the above findings rendered by us we note that all the appeals filed by the revenue would have been dismissed on the ground of low tax effect, but for the application of Circular No. 20/16.

18.Mr.J.S.Narayanasamy, learned Senior Standing counsel for the Revenue submitted that in the appeals in T.C.A.Nos.432 and 436 of 2020, the delay is more than 400 days and not marginal, as in the case of assessee in T.C.A.NO.433 of 2020 and in another case it is more than 900 days.

19. Be that as it may, we have taken note of the fact situation, which was prevailing at the relevant time and as noted by the CBDT while issuance of Circular, therefore, we do not wish to take a different view than the view taken by us noting the fact situation in T.C.A.No.433 of 2020.

In the light of the above, we are not inclined to entertain the appeals filed by the Revenue, which are accordingly dismissed, but, we leave the Substantial Questions of Law open for consideration. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Ssd

TO

- 1.The Income Tax Appellate Tribunal,
"B" Bench, Chennai.
- 2.The Income Tax Appellate Tribunal,
"D" Bench, Chennai.
- 3.The Income Tax Appellate Tribunal,
"A" Bench, Chennai.
- 4.The Commissioner of Income Tax (Appeals) 15,
Aayakar Bhavan,
No. 121, Mahatma Gandhi Road,
Chennai 34.
- 5.The Commissioner of Income Tax (Appeals) 9,
No. 121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
- 6.The Income Tax Officer,
Non Corporate Ward 8 (2),
Chennai 34.

Tax Case Appeal Nos.432, 433 and 436 of 2020

KJ(CO)
GN(01/02/2021)

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