IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2022

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.2677 of 2022
--

1. Deputy Commissioner of Income Tax,
   Non-Corporate Circle-15(1),
   121, Uttamar Gandhi Salai,
   Nungambakkam, Chennai-600 034.

2. The Commissioner of Income Tax (Appeals) 15,
   Ayyakar Bhavan,
   121, Uttamar Gandhi Road,
   Nungambakkam, Chennai-600 034.

3. The Chief Commissioner of Income Tax (Appeals),
   Aayakar Bhavan,
   121, Uttamar Gandhi Salai,
   Nungambakkam, Chennai-600 034.

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

Vs.

Arjun Krishna Kondamani .. Respondent

Prayer:

Writ Appeal No.2677 of 2022 filed under Clause 15 of the Letters Patent, against the order dated 10.04.2019 passed by the learned Single Judge, in W.P.No.6766 of 2019, on the file of this Court.

Writ Petition No.6766 of 2019 filed under Article 226 of the Constitution of India in the nature of Certiorari calling for the records of the second 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 appellants: Mr.A.P.Srinivas, Senior Standing Counsel for Income Tax Department

JUDGMENT

The Writ Appeal is filed challenging the order dated 10.04.2019 passed in W.P.No.6766 of 2019 by the learned Single Judge, whereby, after finding that the respondent/writ petitioner has filed an appeal manually, despite the fact that Rule 45 of the Income Tax Rules mandates/specifically provides for electronic filing of appeal before the Commissioner of Income Tax. The learned Single Judge proceeded to hold that, inasmuch as the appeal is admittedly manually filed in the present case and that the Commissioner of Income Tax has also heard the matter on more than one occasion, was of the view that appeal being a statutory and substantive right, ought not to be denied, in view of procedural lapses in filing of appeal manually, instead of electronically as provided under Rule 45 of the Income Tax Rules. For clarity, it is useful to extract Rule 45 of the Income Tax Rules, as follows:

"PART X

APPEALS

Form of appeal to Commissioner (Appeals).

45. *(1) An 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 form, by furnishing the form electronically in accordance with clause (a) of sub-rule(2) or in paper form.

(3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the

return of income under section 140 of the Act, as applicable to the assessee.

(4) Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.

(5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

(i) specify the procedure for electronic filing of Form No.35 and documents;

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (2, for the purpose of verification of the person furnishing the said form; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished."

2. It is submitted by the learned Senior Standing Counsel appearing for the appellant/Income Tax Department that it has been more than two years since a manual appeal was filed and the assessee (writ petitioner) is yet to file E-appeal and it is submitted that failure to comply with the mandate/requirements

under Rule 45 of the Income Tax Rules, would render the appeal itself not maintainable.

3. A reading of the order of the learned Single Judge would show that the learned Single Judge while granting leave to the petitioner/respondent herein to comply with Rule 45 within period of three weeks, made it clear that this case shall not be treated as a precedent with regard to the mode of filing an appeal. The relevant portion of the impugned order passed by the learned Single Judge is extracted below:

> "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 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."

4. We find no reason to interfere with the impugned order passed by the learned Single Judge, inasmuch as it has been made clear that, in view of the peculiar facts and circumstances of the case and to preserve the right of appeal, the above directions were given while making it clear that this case shall not be treated as a precedent and the question as to whether Rule 45 of the Income Tax Rules must be treated as mandatory or directory, is left open.

5. With the above observations,, the Writ Appeal is disposed of. There shall be no order as to costs.

(S.V.N.,J) (M.S.Q., J)
15.12.2022

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation Case: Yes/no
cs

To

1. Deputy Commissioner of Income Tax,
   Non-Corporate Circle-15(1),
   121, Uttamar Gandhi Salai,
   Nungambakkam, Chennai-600 034.

2. The Commissioner of Income Tax (Appeals) 15,
   Ayyakar Bhavan,
   121, Uttamar Gandhi Road,
   Nungambakkam, Chennai-600 034.

3. The Chief Commissioner of Income Tax (Appeals),
   Aayakar Bhavan,
   121, Uttamar Gandhi Salai,
   Nungambakkam, Chennai-600 034.

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

S.VAIDYANATHAN, J
and
MOHAMMED SHAFFIQ, J

cs

W.A.No.2677 of 2022

15.12.2022