

HC directs tribunal to admit appeal, even though appeal memos weren't signed by the competent person

Summary – The High Court of Madras in a recent case of Singara Nilgiri Plantation Co., (the Assessee) held that where Tribunal dismissed appeal of assessee-firm on preliminary issue of competence of manager to sign appeal memos in respect of appeals filed by firm, in view of facts that Income-tax department itself had acted upon return of income filed by manager and said mistake had been later rectified by assessee by presenting a new statutory Form No. 36, matter was remanded to Tribunal to be decided on merits

Facts

- The assessee was engaged in the business of manufacture and sale of tea. For the relevant assessment year, the Assessing Officer had determined certain amount of taxable income as against the reported 'nil income' filed by the assessee, on the consideration of brought forward losses.
- The Commissioner (Appeals) dismissed the assessee's appeal.
- The Tribunal also dismissed the appeal on the technical ground that the appeal memorandum had been signed by the manager of the firm and not by the managing director or any of the partners.
- As the appeals were dismissed on technical grounds and not on merits, the assessee filed petition for restoration of the appeal but same was also dismissed.
- On appeal before the High Court, the assessee contended that the Tribunal had committed a mistake in assuming that the manager/power of attorney had no competence for signing the return of income, as the Tribunal omitted to notice that the return of income, for the assessment year 2004-05, was signed only by the manager/power of attorney of the firm and same was acted upon by the revenue in terms of section 140.

Held

- The revenue had vehemently contended that even at the time of filing of the appeal, the Tribunal had issued a defect memo, on 25-2-2008, stating that the appeal memo has to be signed by a competent person and a query was also raised by the Tribunal, on the maintainability of appeal, which is allegedly signed by an incompetent person and the assessee has been emphasizing that the manager of the assessee-firm is a competent person to sign the return of income and, therefore, the case of the assessee, for remand of the matter, cannot be accepted.
- Under normal circumstances, this plea of revenue could have been accepted. But, so far as these cases are concerned, the initial mistake is only on the part of the revenue, in accepting the return of income filed by the manager, who is allegedly incompetent and, therefore, it would have led the assessee to form an impression that when he is competent to file the return of income, he would also be competent to sign the memo of appeal. Therefore, the assessee would have remained firm in his contention before the Tribunal, even though the issue relating to the defect in the memo had

been raised. Therefore, just because the assessee was firm in his contentions with regard to maintainability, the appeals cannot be thrown out *in limine*. But at the same time, the mistake once committed by one side cannot be the basis for the other side to commit yet another mistake.

- Admittedly, the orders of the Tribunal are not on merits, but on the preliminary issue of competence of the manager to sign the appeal memos in respect of the appeals filed by the firm.
- Under rule 45(2) the grounds of appeal relating to an assessee shall be signed and verified by the person, who is authorised to sign the return of income under section 140.
- Under section 140, in the case of a firm, the return of income has to be signed by the managing partner or where such managing partner is not available or where there is no managing partner, by any of the partner (not being a minor). Under sub-rule (1) to rule 47, an appeal under sub-section (1) or sub-section (2) of section 253 to the Appellate Tribunal, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed only by the person as mentioned supra in sub-rule (2) to rule 45. A combined reading of these rules makes it clear that the manager is not the authorized person to sign the appeal memos.
- However, when the Income-tax department itself, having acted upon the return of income filed by the manager, the Tribunal cannot dismiss the appeals on the ground that the manager, having no authority to file the return of income, has no authority to sign the appeal memos and, therefore, the appeals had to be dismissed *in limine*. This finding on facts, as well as on conclusions, is incorrect. Admittedly, it is the manager, who has filed the return of income, and he has also signed in the memorandum of appeals. The filing of return involves serious legal consequences under the statute. Therefore, unless authorized by the statute itself, the manager has no authority to file the return of income. Incorrectly, the Income-tax department has accepted the return of income filed by the manager. The assessee has also filed the return of income by an incompetent person. But the mistake has been now rectified, by the assessee, by presenting a new statutory Form No. 36. Consequently, both sides concurring, it is appropriate to remand the matter, for fresh disposal, by the Income-tax Appellate Tribunal, on merits, subject to following terms:
 - There shall be an undertaking by the appellant that the issue relating to the incorrect acceptance of return of income, by the Income-tax Department, though filed by the manager, not by the managing director/partner, shall not be agitated, having presented fresh Statutory Form No. 36.
 - The appellant/assessee undertakes to file fresh appeal memos, signed by the managing partner/partner, for which, the respondent/revenue shall not raise any objection, as per the undertaking given.
 - On the presentation of the said appeal memos, the Tribunal shall take the appeals on file, without raising the issue of limitation and would decide the matter, on merits and in accordance with law.