



ITA No.7039/Mum/2016
UB Ostan (India) Private Limited
Assessment Year-2012-13

आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.7039/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

UB Ostan (India) Private Limited Sahyadri Sadan, Tilak Road Pune-411 030	बनाम/ Vs.	Income Tax Officer 1(3)(4) Aaykar Bhavan Mumbai-400 020
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AABCU-2815-K		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Rajeev Gubangotra, Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	02/08/2018
घोषणा की तारीख / Date of Pronouncement	:	05/09/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [AY] 2012-13 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-3 [CIT(A)], Mumbai, *Appeal No.CIT(A)-3/ITO-1(3)(4)/IT-41/2015-16* dated 29/09/2016 *qua* confirmation of certain additions. The assessment for impugned AY has been framed u/s 143(3) on 30/03/2015 wherein the income of the assessee has been determined at Rs.444.08 Lacs as



ITA No.7039/Mum/2016
UB Ostan (India) Private Limited
Assessment Year-2012-13

against 'Nil' return *e-filed* by the assessee on 29/09/2012. The same, upon confirmation by Ld. CIT(A), is being agitated before us.

2. None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed to dispose-off the same on the basis of material available on record after hearing Ld. Departmental Representative [DR], *Shri Rajeev Gubangotra*, who raised a preliminary issue as to admissibility / validity of the instant appeal.

3. At the outset, upon perusal of order sheet entry dated 10/05/2018, we find that the bench had noticed that the appeal has been filed / signed / verified by the *ex-director* of the company which was confronted to Authorized Representative [AR] who submitted that the company was not doing any business and nobody was there to take care of the company. Accordingly, Ld. AR was directed to substantiate the validity of the appeal and also file the present status of the company, its compliances under the Companies Act, details of directors etc. The appeal was fixed for hearing on 28/06/2018 wherein the Ld. AR sought adjournment and accordingly the appeal was fixed for hearing on 12/07/2018. However the bench did not function on that date and the appeal was fixed for hearing on 02/08/2018. On this date of hearing, as already noted, nobody is present for assessee and no valid adjournment application is on record. Having no other option, we proceed to dispose-off the same.

4. It is noted that the Appeal Form No. 36, verification thereof, statement of facts as per Annexure-1 and Grounds of Appeal as per Annexure-2 are all signed by *J.K.Sardana Ex-Director*'. The reply dated 14/12/2016 against defect notice issued by the registry is also signed by



ITA No.7039/Mum/2016
 UB Ostan (India) Private Limited
 Assessment Year-2012-13

the same person. It is also noted that the stated Authorized Representative for Assessee [AR], *Shah, Shah & Shah, Chartered Accountants* have not filed any Letter of Authority from the Assessee which entitles them to make any submissions before the bench and pleading made by them in any manner, could not be taken cognizance of. In this background, we, at the threshold, examine the maintainability / validity of the instant appeal.

5. The provisions dealing with Form of Appeal to be filed by a company before the Tribunal and the person who is authorized to sign such appeal are contained in Rule 47(1) and 45(2) of Income Tax Rules, 1962 read with Section 140 of the Act, which, to the extent relevant for our purpose, are reproduced hereunder:-

Rule 47 of Income Tax Rules, 1962:-

"47. Form of appeal and memorandum of cross-objections to Appellate Tribunal.— (1) An appeal under sub-section (1) or sub-section (2) of section 253 to the Appellate Tribunal shall be made in Form No. 36 , and where the appeal is made by the assessee, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person specified in sub-rule (2) of rule 45.

Rule 45 of Income Tax Rules, 1962:-

*(45).1 ******

(2) The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification appended thereto relating to an assessee shall be signed and verified by the person who is authorized to sign the return of income under section 140 of the Income-tax Act, 1961, as applicable to the assessee."

Section 140 of The Income Tax Act, 1961 :

140. Return by whom to be signed.— The return under section 139 shall be signed and verified—

(a) in the case of an individual,—

(b) in the case of a Hindu undivided family,



ITA No.7039/Mum/2016
 UB Ostan (India) Private Limited
 Assessment Year-2012-13

(c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof :

Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return :

Provided further that,—

- (a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator referred to in sub-section (1) of section 178;*
- (b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof;*

6. Upon perusal of above provisions, it is clearly evident that an appeal u/s 253 to the Tribunal is required to be filed in prescribed Form No. 36 and the same is to be signed by the persons specified in Sub-rule (2) of Rule 45. As per Sub-rule (2) of Rule 45, the prescribed form of Appeal, the Grounds of Appeal and the Form of Verification appended thereto, are required to be signed and verified by the person who is authorized to sign the return of income under Section 140 of the Income Tax Act, 1961. As per Section 140 of the Income Tax Act, 1961, the return of income under Section 139 has to be signed and verified, in the case of a company, resident in India, by the Managing Director thereof, or where for any inevitable reason such Managing Director is not able to sign and verify the return or where there is no Managing Director, by any Director thereof. A combined reading of these relevant provisions makes it abundantly clear that the person who is the Managing Director of the assessee company, or its Director in certain circumstances, on the date of the filing of the return only can sign and verify the return in the case of



ITA No.7039/Mum/2016
UB Ostan (India) Private Limited
Assessment Year-2012-13

a company, It therefore, follows that a person who is Managing Director or Director, as the case may be, of the company, on the date of filing of the appeal before the Tribunal is only authorized to sign and verify the appeal filed before the Tribunal in the case of a company. In the present case, nothing on record suggest that the person filing the instant appeal was so qualified. Therefore, the instant appeal, not signed and verified as per statutory mandate, is not maintainable in law and hence, liable to be dismissed at the very threshold. We order accordingly. This being the case, delving into the merits of the additions, becomes merely academic in nature and we see no fruitful reason to do the same.

7. Resultantly, the appeal stands dismissed.

Order pronounced in the open court on 05th September, 2018

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05.09.2018
Sr.PS:-Thirumalesh

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai