

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri N.R.S. Ganesan (JM) and Shri B.R. Baskaran(AM)

I.T.A No. 138/Coch/2012
(Assessment year 2009-10)

M/s E.K.K. & Co
Municipal Buildings
Perumbavoor – 683 542
PAN : ABAFS2619E
(Appellant)

vs The A.C.I.T., Cir.1
Aluva

(Respondent)

I.T.A No. 223/Coch/2012
(Assessment year 2009-10)

A.C.I.T., Cir.1
Aluva
(Appellant)

vs M/s E.K.K. & Co
Perumbavoor-683 542
(Respondent)

Appellant by : Shri K.K. Chandrasekharan
Respondent by : Smt. Susan George Varghese

Date of hearing : 11-10-2012
Date of pronouncement : 16-11-2012

O R D E R

Per N.R.S. Ganesan (JM)

The taxpayer as well as the revenue has filed the appeals against the very same order of Commissioner of Income-tax(A)-II, Kochi dated 03-05-2012 and pertain to assessment year 2009-10. We heard both the appeals together and dispose of the same by this common order.

2. Shri K.K. Chandrasekharan, the Id. counsel for the taxpayer submitted that the taxpayer filed the return of income electronically on 25-09-2009. ITR-V generated by computer was dispatched to Central Processing Centre (CPU) at Bangalore by ordinary post on 05-10-2009. Copy of ITR-V and the certificate issued by Chartered Accountant Shri P Rajkumar certifying that ITR-V was sent to CPC on 05-10-2009 is available on the paper book. Referring to the Centralised Processing of Return Scheme, 2011 framed by the CBDT, the Id.counsel submitted that the taxpayer was expected to send the ITR-V within 120 days by ordinary post from the date of uploading of the return electronically. According to the Id.counsel, the return was electronically uploaded on 25-09-2009 and the ITR-V was sent on 05-10-2009, i.e. within 120 days. Therefore, the date of filing of return for all practical purposes has to be taken as 25-09-2009 as per the scheme framed by the CBDT for filing of return electronically. Referring to the scheme framed by the CBDT, the Id.counsel submitted that if at all there was any delay the Commissioner can condone the delay in filing the form ITR-V in order to avoid hardship. The Id.representative submitted that the CPC appears to have received form ITR-V on 29-11-2010. According to the

Id.representative, the duty of the taxpayer ends as soon as ITR-V is posted ordinarily. Therefore, if at all there was any delay in delivering the ordinary post to the CPC, the taxpayer cannot be penalized. ITR-V generated by computer also generates the acknowledgement number and the date of filing. Therefore, for all practical purposes, the date of filing of return of income has to be taken as 25-09-2009 and not 29-11-2010. Therefore, the notice issued u/s 143(2) on 06-09-2011 was beyond the period provided under Proviso to section 143(2). Therefore, the consequential order passed by the assessing officer is without jurisdiction.

3. On the contrary, Smt. Susan George Varghese, the Id.DR submitted that as per the scheme framed by the CBDT the taxpayer has to upload the return electronically within the due date and form ITR-V generated by computer has to be physically signed and sent to the CPC within 120 days from the date of uploading of the return electronically. According to the Id.DR, the purpose of asking the taxpayer to send the form ITR-V generated by computer to CPC is to authenticate the return uploaded by the taxpayer. In other words, according to the Id.DR, if the taxpayer furnishes inaccurate or wrong particulars in the return uploaded electronically the taxpayer will be prosecuted under the relevant provisions of the Act. For that purpose to authenticate the contents of the return uploaded electronically, the taxpayer was required to sign the form ITR-V physically and send to CPC within 120 days from the date of uploading of the return electronically. According to the Id.DR, if the form ITR-V was despatched within 120 days from the date of uploading of the return electronically then the date of

uploading of the return shall be treated as date of filing of the return. In any case, if form ITR-V was not sent to the CPC or it was not sent within 120 days from the date of uploading of the return, then the return uploaded by the taxpayer shall be treated as invalid return and the taxpayer is required to upload the return electronically once again. On a query from the bench, whether the computer automatically generates the acknowledgement number and the department could view the return uploaded by the taxpayer electronically, the Id.DR fairly submitted that the computer automatically generates the acknowledgement and form ITR-V also and the return uploaded could be seen by the department. In this case, according to the Id.DR, though the return was electronically uploaded on 25-09-2010 the CPC received form ITR-V only on 29-11-2010, therefore, it was received after 120 days. Hence, the assessing officer treated the return as if it was filed on 29-11-2010 i.e. the date of receipt of form ITR-V by the CPC. Since the taxpayer claimed that form ITR-V was posted on 05-10-2009 and a certificate was also filed from the Chartered Accountant, this Tribunal directed the Id.DR to produce the postal cover received by the CPC at Bangalore. However, the department could not produce the postal cover received by CPC at Bangalore and the Id.DR has filed a copy of the letter received from the CPC at Bangalore saying that the envelopes in which hard copies of form ITR-V has been sent to CPC by the taxpayers have not been preserved and it was discarded on daily basis. After the conclusion of the argument, the Id.DR filed a written submission saying that the CBDT by a circular No.3/2009 dated 21-05-2009 has extended the time limit for filing of form ITR-V upto 31-12-2010 or 120 days from the date of uploading of

the return whichever is later. The Id.DR has also mentioned in the written submission that CBDT condoned the delay in filing ITR-V after 120 days which means the CBDT has validated the return filed by the taxpayer on September, 2009. According to the Id.DR, the date of filing of the return does not relate back to date of uploading of the return in case the return in form ITR-V was not filed within 120 days.

4. We have considered the rival submissions on either side and also perused the material available on record. Admittedly, as per the scheme framed by the CBDT, the taxpayer uploaded the return electronically on 25-09-2009 before the due date for filing of return of income u/s 139(1) of the Act. Though there was a controversy on the date of dispatch of form ITR-V the fact remains is that CPC admittedly received the form ITR-V on 29-11-2010. In fact, the department admits that CPC received the form on 29-11-2010. This fact is also admitted by the assessing officer in the assessment order. By way of a written submission after the conclusion of the hearing, the Id.DR has filed a copy of letter received from the Income-tax Officer (H.Qrs), CPC and the copy of the form ITR-V received by CPC and CBDT circular in circular No.3/2009 dated 21-05-2009. The Income-tax Officer (HQrs) in his letter dated 22-10-2012 has clarified that in case e-return was filed for the assessment year 2009-2010 Form ITRV was required to be sent to CPC within 60 days which was further extended upto 31-12-2010. For the purpose of convenience, the relevant paragraph from the letter of the ITO (HQrs) at Bangalore is reproduced below:

“ It is a fact that the above assessee uploaded the e-return on 25.09.2009 vide e.ack.No.90921980250909. Mere upload of e-return does not construe as filing a valid return under Section 139(1) of the I.T. Act. It is also required to be duly signed in the verification form (Section 139(1) read with section 140 of the I.T. Act, 1961) and sent to the I.T. Authorities. In case of e-returns for A.Y. 2009-10, it was required to be sent to CPC within 60 days which was further extended upto 31.12.2010. On receipt of the ITR-V in CPC, the ITR-Vs are sorted, date stamped, barcoded, scanned and e-mails sent to the assesseees.

In respect of the above assessee, though the e-return was uploaded on 25.09.2009, the ITR-V was sent to CPC on 29.11.2010 only. As desired, the ITR-V which was received in respect of the above assessee is enclosed herewith. As stated earlier, the e-return however was not processed in CPC and the data got transferred directly from the e-filing administrator to the jurisdictional Assessing Officer on 02.12.2010 for processing. This is for your kind information.”

The CBDT by a circular dated 21-05-2009 has issued the circular in circular No.03/2009. For the purpose of convenience, we are reproducing the circular received from the CBDT, copy of which was filed by the Id.DR

“The Central Board of direct Taxes (CBDT) had issued a circular in May 2009 notifying the income tax return forms for Financial Year (FY) 2008-09 (Assessment Year 2009-10) and clarifying the process for e-filing of the returns without digital signature.

As per the said circular, the taxpayer was required to submit the Form ITR-V with the Income tax department as verification of the electronic filing of the return within 30 days of such

filing. Thereafter, this limit of filing the ITR-V has been extended on various occasions.

Due date for filing the ITR-V further extended for FY 2008-09

The CBDT has recently issued a press release extending the time limit for filing the ITR-V form upto 31st December 2010, or 120 days from the date of filing the tax return, whichever is later. As per the said press release, this opportunity is being given to taxpayers who have either not filed their ITR-V or have filed the same with the local Income tax office.

It has also been clarified that the following taxpayers may again send their ITR-V to Centralised Processing Center (CPC).

Taxpayers who have filed ITR-V with the local tax office.

Taxpayers who have sent their ITR-V to CPC, but have not received an acknowledgement e-mail from CPC.”

From the circular issued by CBDT and the letter of the Income-tax Officer (HQrs) dated 22-10-2012 it is obvious that the date of filing of form ITR-V is extended upto 31-12-2010. Admittedly, ITR-V has been received by CPC on 29-11-2010. The contention of the Id.DR now appears from the written submission is that the filing of ITR-V within the extended period only validates the return filed by the taxpayer and it will not relate back to the date of uploading of the return. We are unable to uphold this contention of the Id.DR.

5. The scheme frame by the CBDT clearly says that where the return was filed electronically with digital signature the acknowledgment generated electronically shall be evidence for filing of the return. Wherever, the return was filed electronically without digital signature, on

successful transmission, the computer shall generate acknowledgement in form ITR-V. The form ITR-V generated by computer shall be downloaded and after taking a print out it shall be physically verified under the signature of the taxpayer and forwarded to the CPC. The scheme has also clarified that the date of transmitting the return electronically shall be the date of furnishing of return if the form ITR-V is furnished in the prescribed manner and within the period specified. In this case, the period specified is 31-12-2010 or 120 days from the date of uploading the return whichever is later. Admittedly form ITR-V was received by CPC on 29-11-2010 is within the prescribed time in the prescribed manner in the prescribed form. Hence, for all practical purpose, the date of filing of the return shall relate back to the date on which the return was electronically uploaded i.e. 25-09-2009. Therefore, the contention of the Id.DR that receipt of Form ITR-V is the date of receipt of return has no merit at all.

6. In view of the above, the date of filing of the return of income is 25-09-2009. Therefore, the notice served on the taxpayer u/s 143(2) on 26-08-2011 is beyond the period of six months from the end of the financial year in which the return was furnished. Therefore, the notice issued by the assessing officer u/s 143(2) is invalid. Hence, it cannot be acted upon. Consequently, the assessment order passed by the assessing officer cannot stand in the eyes of law. Therefore, the same is quashed.

7. Elaborate arguments were made both by the Id.counsel for the taxpayer and by the Id.DR with regard to the object of filing form ITR-V and

the mode prescribed by CBDT to transmit form ITR-V by ordinary post and the additions made by the assessing officer. In view of the admitted position and the extension of time limit by CBDT for filing Form ITR-V till 31-12-2010 for the assessment year under consideration, this Tribunal is of the considered opinion that it may not be necessary to consider all these arguments. However, we make it very clear that the object behind the filing of form ITR-V the method prescribed by CBDT for transmitting the same by ordinary or speed post and the consequence of not filing the Form ITR-V within the specified time are left open to be decided in appropriate appeal.

8. With the above observations, the orders of the authorities below are set aside.

9. In the result, appeal of the taxpayer in ITA 138/Coch/2012 allowed and the appeal of the revenue in ITA 223/Coch/2012 are dismissed.

Order pronounced in the open court on this 16th November, 2012.

Sd/-

(B.R. Baskaran)
ACCOUNTANT MEMBER
Cochin, Dt : 16th November, 2012
pk/-

sd/-

(N.R.S. Ganesan)
JUDICIAL MEMBER

copy to:

1. The appellant
2. The respondent
3. The Commissioner of Income-tax
4. The Commissioner of Income-tax(A)
5. The DR

(True copy)

By order

Asstt. Registrar, Income-tax Appellate Tribunal, Cochin Bench