

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER  
AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 991/Mum/2017  
(Assessment Year 2010-11)

M/s.Unique Properties & Securities Pvt. Ltd.  
4<sup>th</sup> Floor, Malhotra House,  
Opp. GPO, Fort,  
Mumbai 400 001.  
PAN: AAACU 0702G

..... Appellant

Vs.

The ACIT, Cen.Cir.38,  
(Presently DCIT, Cen.Cir.6(3))  
Mumbai -400 021.

.... Respondent

Appellant by : Shri Pawan Saraf  
Respondent by : Shri Ram Tiwari

Date of hearing : 22/08/2017  
Date of pronouncement : 10/11/2017

**ORDER**

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2010-11 is directed against an order passed by the CIT(A) -54, Mumbai dated 04/11/2016, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 31/12/2012.

2. The sole grievance of the assessee in this appeal is against the decision of the CIT(A) in dismissing the appeal of the assessee in-limine

without noticing that the defect pointed out stood rectified even prior to passing of order by the CIT(A).

3. Briefly put, the relevant facts are that the assessee filed an appeal before the CIT(A) on 18/11/2015, which was not accompanied by the appeal fee of Rs.1,000/-, as prescribed in terms of section 249(1)(ii) of the Act . The relevant discussion in the order of the CIT(A) reveals that when assessee was made aware of the defect, assessee submitted through a communication dated 03/11/2016 that the requisite fee was paid on 13/10/2016 and a copy of the challan was also annexed thereto. The CIT(A) took the opinion that since the requisite fee has been paid subsequent to the filing of the appeal and, therefore, it was not in compliance with the requirements of section 249(1)(ii) of the Act, which mandate that the Memo of Appeal be accompanied by the requisite fee. Therefore, he has dismissed the appeal as not maintainable.

4. Before us, the Ld.Representative for the assessee vehemently pointed out that non-payment of the appeal fee at the time of filing of appeal was an inadvertent mistake, which was immediately rectified when it came to the notice of the assessee in the course of the appeal proceedings itself. Therefore, it is contended that the delay in payment of appeal fee be condoned and the appeal filed by the assessee before the CIT(A) be restored for adjudication on merits.

5. On the other hand, the Ld. Departmental Representative reiterated the stand of the CIT(A), which is to be effect that non-accompaniment of the appeal fee alongwith the Memo of appeal was a

fatal mistake and, therefore, the appeal has rightly been dismissed as non-maintainable.

6. We have carefully considered the rival submissions. No doubt, section 249(1) of the Act prescribes that every appeal made to the CIT(A) shall be accompanied by the appeal fee prescribed therein. Factually speaking, in the instant case, when the appeal was filed by the assessee, the prescribed appeal fee of Rs.1,000/- was not annexed. Subsequently, before the appeal was taken up for final determination by the CIT(A), assessee paid the appeal fee of Rs.1,000/- on 13/10/2016 and produced the challan. Assessee requested the CIT(A) to condone the delay as it was on account of a clerical error. The CIT(A) did not condone the delay on the ground that the appeal was necessarily to be accompanied by the prescribed fee and in the absence of the requisite fee, the appeal was not maintainable. In our considered opinion, the approach of the CIT(A) is quite contrary to the proposition explained by the Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katiji & Ors., 167 ITR 471(SC). As per the Hon'ble Supreme Court, where technical considerations are pitted against substantial justice, then the substantial justice should prevail and technical considerations should not stand in the way. Even if one has to consider that the appeal filed was defective in the absence of the appeal fee, the non-payment of fee is a rectifiable defect; and, once the defect has been rectified, the CIT(A) ought to have admitted the appeal for adjudication on merits, especially considering the fact that the reasons advanced for non-payment of fee in time, have not been found to be lacking in bona-fides. Pertinently, assessee explained before the CIT(A)

that the office staff who presented the appeal made a mistake and that merely because of a bonafide clerical error assessee ought not to be made to suffer by treating the appeal as non-maintainable. The discussion by the CIT(A) does not show that the reasons advanced by the assessee have been found to be non-bonafide or fallacious, in any manner. Therefore, considering the facts and circumstances of the case and the aforesaid discussion we deem it fit and proper to hold that the CIT(A) was wrong in treating the appeal of the assessee as non-maintainable. Accordingly, we set-aside the impugned order and restore the appeal of the assessee before the CIT(A) with direction to adjudicate the appeal denovo on merits. Needless to mention, the CIT(A) shall dispose of the appeal of the assessee on merits after allowing the assessee a reasonable opportunity of being heard as per law.

7. In the result, the appeal of the assessee is allowed as above.

Order pronounced in the open court on 10/11/2017.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(G.S. PANNU)  
ACCOCUNTANT MEMBER

Mumbai, Dated 10/11/2017  
Vm, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**