

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.Nos.5118 & 5828/Del./2018
Assessment Year 2013-2014

Creative Ideas B-304, New Friends Colony, New Delhi. PAN AAGFC4306H	vs.	The Income Tax Officer, Ward -28(4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Madhur Aggarwal, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	28.02.2019
Date of Pronouncement :	07.03.2019

ORDER

Both the appeals by the same assessee are directed against the different orders of the Ld. CIT(A)-10, New Delhi, Dated 21st April, 2017 and 28th June, 2018 for the A.Y. 2013-2014.

2. I have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

3. Briefly the facts of the case are the A.O. passed the assessment order dated 18th February, 2016 under section 143(3) determining the total taxable income of Rs.16,05,970/-. The assessee filed original return of income on 30th September, 2013. The assessee, however, filed manual appeal before the Ld. CIT(A) against the assessment order. The Ld. CIT(A), therefore, noted that since the assessee filed return of income electronically, therefore, the assessee is required to file appeal in Form-35 electronically. The appeal of assessee was, therefore, held to be not maintainable and the same was dismissed by vide Order Dated 21st April, 2017.

3.1. The assessee in view of the above order dated 21st April, 2017 filed fresh appeal before Ld. CIT(A) on 15th May, 2017 through electronic mode against the assessment order dated 18th February, 2016. The assessee explained before the Ld. CIT(A) that earlier appeal filed manually was accepted by the O/o. Ld. CIT(A) and now assessee came to know that appeal of assessee has been dismissed because it was filed manually. Whereas assessee was required to file

the appeal in electronic mode. Immediately after service of the appellate order Dated 21st April, 2017, assessee took steps to re-deposit the appeal fees and obtained pen-drive of the digital signature, which had by then expired. In fact, such digital signatures are required to be obtained from Agency approved by the CBDT. It took about 15 days time. Assessee, thereafter, immediately filed appeal electronically on 15th May, 2017 against the assessment order dated 18th February, 2016. The assessee filed application for condonation of delay explaining the same reason that there was no delay on the part of the assessee because assessee immediately filed appeal manually within the period of limitation and because of the above circumstances, the appeal could not be filed electronically. The assessee stated that it was a mere irregularity which is curable. Therefore, in order to do justice, the procedural lapse should not be considered for denying justice to the assessee. The assessee relied upon the order of ITAT in the case Gurinder Singh Dhillon vs., ITO, Ward-15(4), New Delhi, in ITA.No.6595/Del./2016 Dated 19th April, 2017 in which the Ld. CIT(A)

was directed to condone the delay and decide the appeal of assessee, after giving opportunity of being heard. Two more Orders of the Tribunal are also relied upon on the same preposition.

3.2. The Ld. CIT(A) noted that earlier his predecessor dismissed the appeal of assessee because it was filed manually vide Order Dated 21st April, 2017. The Ld. CIT(A), however, held that subsequent appeal cannot be adjudicated because appeal should have been filed against the earlier order of the Ld. CIT(A) before the Tribunal. The Ld. CIT(A) again dismissed the appeal of assessee *in limine* and his findings in para-5 of the order Dated 28th June, 2018 is reproduced as under :

“5. It is noticed that after the appeal filed by the appellant was dismissed by my Ld. predecessor vide order dated 21/04/2017, the appellant electronically filed the present appeal on 15/05/2017, which was after eleven months of the last date of filing appeal electronically as provided in Circular No. 20/2016 dated

26/05/2016. The appellant has filed a letter dated 15/05/2017 for condonation of delay in filing appeal electronically which has been duly considered. The appellant has referred to order-of the ITAT in the case of Gurinder Singh Dhillon vs. ITO, Ward-15(4), New Delhi, ITA 6595/Del./2016 for A.Y. 2013-14 and the order of the ITAT, Mumbai in the case of Unique Properties and Securities P. Ltd. v DCIT, Central Circle-6(3), Mumbai in ITA No. 5475/Mum/2017 for A.Y. 2013-14. It is noted that in the case of Gurinder Sigh Dhillon the electronic appeal was filed on 08/10/2016 and m the case of Unique Properties the e-appeal was filed on 12/12/2016. The other judicial pronouncements relied upon by the appellant have also been duly considered. In this case since the appeal has already been decided by the CIT(A), the same appeal cannot be adjudicated upon again by the CIT(A). Once the appeal filed was dismissed by the appellant, the recourse

available before the appellant was to file an appeal before the ITAT in case it was aggrieved with the order of the CIT(A). In light of the above, the request for condonation of delay filed by the appellant is treated as infructuous. Considering the above discussion, the appeal of the appellant is treated as non maintainable and is dismissed in limine.”

4. I have considered rival submissions of both the parties. Learned Counsel for the Assessee submitted that at least the second appeal filed electronically should have been considered on merit by condoning the delay in filing the appeal.

5. The Ld. D.R, however, relied upon the impugned orders.

ITA.No.5118/Del./2018 :

6. This appeal is filed against the order of Ld. CIT(A) Dated 21st April, 2017 which was dismissed because the appeal was not filed electronically. The Ld. CIT(A) held

that appeal is not maintainable and the same was dismissed *in limine*. I, therefore, do not find any infirmity in the order of the Ld. CIT(A) in dismissing this appeal of assessee.

7. In the result, ITA.No.5118/Del./2018 dismissed.

8. However, as regards ITA.No.5828/Del./2018, it is a fact that assessee after dismissal of the first appeal *in limine* moved fresh appeal before Ld. CIT(A), after taking the required steps. The assessee also filed application for condonation of delay, which the Ld. CIT(A) should have considered pragmatically in favour of the assessee considering the above facts. The Ld. CIT(A) instead of adjudicating upon application for condonation of delay, has gone on a different direction and held that since appeal of assessee has already been decided by the Ld. CIT(A), therefore, same cannot be adjudicated upon by the Ld. CIT(A). The Ld. CIT(A), however, noted that once appeal was dismissed by the Ld. CIT(A), the assessee should have file an appeal before the ITAT. The findings of the Ld. CIT(A) cannot be sustained in Law. The Ld. CIT(A) vide his first order dated 21st April, 2017 dismissed the appeal of

assessee being not maintainable and *in limine* because it was not filed electronically. Thus, the appeal of assessee was dismissed on technical reasons, without deciding the appeal of assessee on merits. Therefore, there is no bar on assessee in filing appeal electronically subsequently against the order of the assessment passed by the assessing officer on Dated 18th February, 2016. The assessee has taken right step in moving fresh appeal before Ld. CIT(A) through electronic mode. The findings of the Ld. CIT(A) are thus, liable to be set aside. The facts and circumstances above clearly explain that the delay in filing the appeal was bonafide and as such, the Ld. CIT(A) should have condoned the delay in filing the appeal electronically as per the Rules. I, therefore, condone the delay in filing the appeal electronically before Ld. CIT(A) and set aside the orders of the Ld. CIT(A). The appeal of assessee is restored to the file of Ld. CIT(A) with a direction to decide the appeal of assessee on merits, by giving reasonable sufficient opportunity of being heard to the assessee.

9. In the result, ITA.No.5828/Del./2018 allowed for statistical purposes

10. To sum-up, ITA.No.5118/Del./2018 of assessee dismissed and ITA.No.5828/Del./2018 of assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 07th March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.