

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

ITA No. 862/Hyd/2018		
Assessment Year: 2011-12		
Tingrikar Sanjay Kumar, Hyderabad. PAN: AEPPT 8912 F	Vs.	ITO, Ward-7(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Sri K. Gopala Krishna, DR	
Date of hearing:	12/03/2019	
Date of pronouncement:	15/03/2019	

ORDER

PER V. DURGA RAO, J.M.:

This appeal is filed by the assessee is directed against the order of the CIT(A)-3, Hyderabad dated 22/02/2018 for the assessment year 2011-12. In this appeal, assessee has raised the following grounds of appeal:-

1. *The order of the Ld CIT (A) is erroneous both on facts and in law.*
2. *The Ld CIT(A) erred in disposing the appeal on the ground that the appeal was filed in the physical format and not electronically.*
3. *The Ld CIT (A) ought to have considered the fact that the process of e-filing the appeal physically is not dispensed with and the facility of e-filing was provided additionally and that, therefore, the Ld CIT*

(A) ought to have admitted the appeal and decided the appeal on merits.

4. *The Ld CIT (A) ought to have provided proper opportunity before passing any order disposing the appeal in limini.”*

2. Brief facts of the case are that the assessee, an individual, is engaged in wines business, filed his return of income declaring total income of Rs. 2,21,250/-. The assessment was completed u/s 143(3) r.w.s 147 of the Act, estimating the net profit @ 5% of the value of the stock put to sale. During the assessment proceedings, the appellant submitted that the capital introduced for the purpose of business included an amount of Rs. 12 lakhs which is mobilized from three different parties viz., (i) Sri Bade Nageswara Rao; (ii) Sri Gopagoni Narsing Rao and (iii) Sri Bandari Sharath Babu. The amounts were received on 13/06/2010 when the same was required for depositing into the bank account and the same were repaid during the November / December, 2010 and January, 2011. Since the assessee has obtained the loans through cash, penalty proceedings were initiated u/s 274 r.w.s 271D of the Act and the JCIT issued notice u/s 271D of the Act requiring the assessee to furnish the reasons and not satisfied with the assessee's explanation, penalty of Rs. 12,00,000/- was levied u/s 271D of the Act.

3. Aggrieved, assessee filed an appeal manually, before the CIT(A). The CIT(A), observing that the assessee is required to file the appeal electronically, has dismissed the same *in limine*.

4. Against the said order, the assessee is in appeal before us by raising the above mentioned grounds of appeal.

5. The Learned Counsel for the Assessee submitted that this was the first year in which the assessee was required to file the appeal electronically, but the assessee has filed the appeal manually within the time limit prescribed in the Statute. He prayed for one more opportunity for filing the appeal electronically and the appeal be decided on merits.

6. The Learned Departmental Representative, on the other hand, supported the order of the CIT(A).

7. Having regard to the rival contentions and the material on record, we find that this is the first year where the assessee was required to file the appeal electronically, but the assessee had filed the appeal within the time before the CIT(A) manually. Therefore, the CIT (A) dismissed the appeal of the assessee. Under similar circumstances, the Hon'ble jurisdictional High Court has considered the very same issue in W.P.No. 21099/2018 in the case of M/s. Rayalaseema Bullion and Commtrade Private Limited vs. CIT(A)-3, Hyderabad wherein the Hon'ble High Court

has directed the assessee to file his e-return and the CIT (A) shall consider the same and adjudicate the appeal on merits. For the sake of ready reference, relevant portion is extracted:-

“The grievance of the petitioner company in this case is with regard to the action of the Commissioner of Income Tax (Appeals)-3, Hyderabad, the first respondent herein, in passing order dated 12/03/2018 in ITA No.0152/ITO-3(2)/Hyd/CIT(A)-3/2016-17, in relation to the assessment year 2013-14, whereby the petitioner-company’s appeal was dismissed in limini on the ground that it had failed to e-file the said appeal as mandatorily required.

Having received instructions in the matter, Sri Vinod Kumar Tadakamalla, Learned Senior Standing Counsel for the Revenue, would inform this court that the assessment order under appeal before the first respondent was dated 29/03/2016 and was received by the petitioner company on 04/04/2016. Aggrieved thereby, the petitioner company filed an appeal manually on 03/05/2016. While so, Rule 45 of the Income Tax Rules, 1962 (for brevity, the Rules of 1961) was amended with effect from 01/03/2016 requiring filing of appeals in e-format. However, owing to the glitches in implementation of this new procedure, the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, issued Circular No.20/2016 dated 26/05/2016 seeking to mitigate the inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing of appeals and extended the time limit for filing of the appeals which were to be filed by 15/05/2016 up to 15/06/2016. The Board further directed that all e-appeals filed within the extended period should be treated as appeals filed within time.

In the case on hand, it appears that the appeal filed by the petitioner company was not returned on the ground that it had not been e-filed in terms of the amended Rule 45 of the Rules of 1962. Having kept the appeal pending after numbering it, the Appellate Authority ultimately dismissed it on the ground that it was not e-filed. When the Central Board of Direct Taxes itself saw it fit to extend the time for e-filing of appeals, had the appeal filed by the petitioner company been returned on the ground it was not filed as per the due procedure, the petitioner company could have taken steps to file it within the extended time. As the appeal was not returned to it and was numbered, on the other hand, the petitioner company was under the belief that its appeal would be entertained. This being the fact situation, the petitioner company cannot be penalized for not resorting to e-filing of its appeal within the extended time as stipulated by the Board.

In such circumstances, the writ petition is allowed to the extent of setting aside the order dated 12/03/2018 passed by the first respondent in ITA No. 0152/ITO-3(2)/Hyd/CIT(A)-3/2016-17. The first respondent shall return the subject appeal to the petitioner company within one week from the date of receipt of a copy of this order and thereupon, the petitioner company shall e-file its appeal in accordance with the due procedure within two weeks thereafter. In the event the petitioner company files its appeal through e-format as directed supra, the appellate Authority shall consider the said appeal on its own merits without reference to the limitation aspect as it is an admitted fact that the said appeal was originally filed within time. The petitioner company is at liberty to raise additional grounds in the said appeal at the time of personal hearing.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.”

8. We therefore, respectfully following the decision of the Hon’ble jurisdictional High Court (supra) direct the assessee file its appeal electronically and direct the CIT(A) to dispose of such an appeal on merits after giving the assessee an opportunity of being heard.

9. In the result, assessee’s appeal is treated as allowed for statistical purposes.

Pronounced in the open Court on 15th March, 2019.

Sd/-
(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Hyderabad, Dated: 15th March, 2019

OKK

Copy to:-

1)	Tingrikar Sanjay Kumar Prop. Sanjay Wines, D.No.13-6-690/3, Karwan, Ziaguda, Hyderabad.
2)	Income Tax Officer, Ward-7(2), Signature Towers, Kondapur, Hyderabad.

3)	The CIT(A)-3, Hyderabad
4)	The Pr. CIT-3, Hyderabad
5)	The DR, ITAT, Hyderabad
6)	Guard File