

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

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| ITA No. 477/Bang/2018 |
| Assessment Year :2013-14 |

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| M/s. Happy Valley Developers, 2472, 17 th Main, 25 th Cross, Banashankari 2 nd Stage, Bangalore – 560 070. PAN: AAAAH1868A | Vs. | The Assistant Commissioner of Income Tax, Circle – 7 (2) (1), Bangalore. |
| APPELLANT | | RESPONDENT |

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| Assessee by | : | Shri Mukesh P. Shet, CA |
| Revenue by | : | Shri R.N. Siddappaji, Addl. CIT (DR) |

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| Date of hearing | : | 08.05.2019 |
| Date of Pronouncement | : | 16.05.2019 |

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A)-7, Bangalore dated 21.12.2017 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“1. On the fact and in the circumstances of the case and in law the learned CIT(A) erred in not deciding the issue on merits and in the interest of natural justices allowing the deduction for the income generated from wind mills U/s 80IA of Rs.1,32,75,605/-, The applicant prays that the same may be kindly be heard and allowed.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in dismissing the appeal which was submitted on 22/04/2016 in the physical form and the same was accepted by the office of the CIT appeals as invalid without giving proper opportunity to re file inelectronically mode before disposing the appeal. The applicant pray that an opportunity be given to e file the manually filed appeal and same be taken up for hearing.

3. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

3. It was submitted by Id. AR of assessee that the appeal was filed by the assessee before CIT (A) on 22.04.2016 in physical form although there was an amendment w.e.f. 01.03.2016 to the effect that from this date, the appeal before CIT (A) should be filed as e-appeal and not in paper format. It was submitted before us that since this was the new provision, the assessee was not aware and therefore, the assessee filed the appeal in paper form which was accepted by the office of CIT (A) also without pointing out at that point of time that it should be filed electronically. It was submitted before us that in the interest of justice, the assessee should be given an opportunity to file the appeal electronically and thereafter, the same should be decided by CIT (A) on merit. The Id. DR of revenue supported the order of CIT(A).
4. We have considered the rival submissions. We find that para nos. 4, 4.1 and 5 to 7 of the order of CIT (A) are relevant and hence, the same are reproduced hereinbelow.

“4. The appellant has filed Form no 35 and the appeal in manual form on 22.04.2016. The Rule 45 of the IT Rules 1962 requires compulsory e-filing of appeals before the CIT(A) with effect from 01-03-2016 in respect of persons who are required to furnish return of income electronically. It is found that the appellant has not filed e-appeal in compliance to the requirement of Rule 45 of IT Rules 1962. In view of this, a letter was sent to the appellant by speed post vide ITA No: 70/CIT (A)-7/BNG/2016-17 dated 06-09-2017 as under:

[[Form of appeal to Commissioner (Appeals).

45. (1) An appeal to the Commissioner (Appeals) shall be made in Form No. 35.

(2) Form No. 35 shall be furnished in the following manner, namely:—

(a) in the case of a person who is required to furnish return of income electronically under sub-rule (3) of rule 12,—

(i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;

(ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (i);

(b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule(2) or in paper form.

(3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.

(4) Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished.

(5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

(i) specify the procedure for electronic filing of Form No.35 and documents;

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for the purpose of verification of the person furnishing the said form; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished.]

Thus, the Rule mandates that, with effect from 01-03-2016, a person who is required to file the return of income electronically is also required to file the appeal to CIT(A) electronically. The appellant comes in the category of assessee who are required to file return of income electronically. Therefore, the appellant was required to file its appeal to CIT(A) also electronically. But this has not been done.

6. It is observed that, considering the grievance relating to filing of e-appeals in the initial period, the CBDT vide circular 20/2016 had extended the due date for e-filing of appeals due by 15 May 2016 to 15-06-2016. The circular is reproduced below:

**SECTION 139 OF THE INCOME-TAX Act, 1961- RETURN OF
INCOME. E-FILING OF APPEALS - EXTENSION OF TIME
LIMIT
CIRCULAR NO.20/2016 [F.NO.279/MISC/M-54/2016/ITJ],
DATED 26-5-2016**

Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing

of appeals before Commissioners of Income Tax (Appeals) with effect from 1-3-2016 in respect of persons who are required to furnish return of income electronically. It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of appeals was made operational from 12-5-2016 for individuals and from 19-5-2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

2. The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing of appeals, it has been decided to extend the time limit for filing of such appeals. Appeals which were due to be filed by 15-5-2016 can be filed up to 15-6-2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

3. In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15-6-2016. Such e-appeals would also be treated as appeals filed within time.

7. Thus, it is clear from the above circular that taxpayers were provided extended time to file appeals electronically by 15-06-2016 in cases where appeals were due by 15-05-2016. The appellant could have availed this extension and filed appeal by 15-06-2016. But no effort has been made for the same. Vide this office letter (supra), the appellant was informed about the requirement of filing appeal online. Even no effort has been done to file appeal electronically subsequent to this communication, though the same would have resulted in delayed filing of appeal necessitating condonation of the delay. Nevertheless, the case would have been on a total different footing considering the circumstances. But the appellant chose to act differently. Be it as it may, as filing of the appeal electronically was mandatory for the appellant, filing the same in paper form cannot be accepted. Therefore, the appeal filed by the appellant in paper form on 22.04.2016 is treated as invalid.”

5. From the above paras reproduced from the order of CIT(A), it is seen that as per Circular No. 20/2016 dated 26.05.2016, the taxpayers were provided extended time to file appeals electronically by 15.06.2016. In the present case, the appeal in paper form was filed by assessee on 22.04.2016 and hence, the assessee had the time to file the appeal electronically up to

15.06.2016 if this would have been pointed out by the office of CIT (A) at that point of time but since the assessee was not aware and the assessee was intimated only in September 2017 regarding this defect, the assessee was not having any time left for rectifying the mistake in view of Circular No. 20/2016 dated 26.05.2016. Considering all these facts and in the interest of justice, we hold that in the facts of present case, the assessee should be provided time to file the appeal electronically and hence, we set aside the order of CIT(A) and restore the matter back to his file for fresh decision with the direction that the assessee should file the appeal electronically within 30 days from the date of receipt of this order and if the assessee does so, then Id. CIT(A) should accept the same by condoning the delay in filing of appeal electronically and thereafter, he should decide the appeal on merit after providing opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 16th May, 2019.
/MS/

Copy to:

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.