

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE HON'BLE JUSTICE(R) SHRI P.P.BHATT, PRESIDENT
AND G.S. PANNU, VICE PRESIDENT**

ITA NO. 425/MUM/2018 : (A.Y : 2008-2009)

M/s. Asterix Reinforced
Limited (formerly known as
Bombay Highpolymer
Chemical Products Limited
and Orson Petrochemical Pvt
Ltd. 8, Premson shopping
Centre, Tahira Compound,
Caves Road, Jogeswari (E),
Mumbai.

Income Tax Officer -10(3)(2),
Mumbai
PAN No.AAACO 9377 P

(Appellant) Vs
. (Respondent)

**Appellant by : Shri Khushal Shah, AR
Respondent by : Ms Harkamal Sohi, DR**

**Date of Hearing: 04/04/2019
Date of Pronouncement : 31/05/2019**

ORDER

PER G.S. PANNU, VP :

The captioned appeal filed by the Assessee pertaining to Assessment Year 2008-09 is directed against an order passed by CIT(A)-17, Mumbai dated 30.10.2017, which in turn arises out of an order passed by the Assessing Officer under Section 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short 'the Act') dated 30.3.2016.

2. In this appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.1,00,00,000/- made u/s.68 of the Income Tax Act, 1961 by the Assessing Officer on account of unexplained cash credit on the ground that the appeal was filed manually.

3. Facts of the case are that during the course of assessment proceedings, the Assessing Officer noticed that the assessee has taken accommodation entry from the various entities in the nature of share application money of Rs.1,00,00,000/- as under:

Sr. No.	Name of the party	Share capital received (Rs.)
1.	Hema Trading Company Pvt Ltd.(Nakhatra Business Pvt Ltd)	5,00,000
2.	Rajesh Gods Pvt Ltd.	15,00,000
3.	Anupriya Vinimay Pvt Ltd.	15,00,000
4.	Loknath Vyapar Pvt Ltd.	10,00,000
5.	Kamyu Commercial Pvt Ltd.	10,00,000
6.	Flora Stock Broking Pvt Ltd.	10,00,000
7.	Multi Phase Engg. Ind Ltd.	15,00,000
8.	Kirti Goods Pvt Ltd.	12,00,000
9.	Nilima Goods Pvt Ltd.	3,00,000
10.	Narayani Texmin Pvt Ltd.	5,00,000
	Total:	1,00,00,000

4. The Assessing Officer issued notices u/s.133(6) of the Income Tax Act, 1961 to the above entities to verify the identity, creditworthiness, genuineness, source and nature of the transactions, which were returned back unserved by the postal authorities. Thereafter, a commission u/s.131(1)(d) of the I.T.Act, 1961 was issued to DDIT(Inv), Unit 2(4), Kolkata on 1.3.2016 and the report was received intimating that some of the entities are not in existence and in some cases, summons have been served but nobody appeared. In view of the above facts, the Assessing Officer observed that the assessee clearly failed to prove the identity, creditworthiness of the lender and genuineness, nature and source of the transactions and, accordingly, added the same to the total income of the assessee u/s.68 of the Income Tax Act, 1961.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A).

6. The CIT(A) observed that the assessee filed appeal manually, which was to be filed electronically in view of the Notification No.SO 637(E)(No.11/2016(F.No.149/150/2015-TPL) dated 1.3.2016 and further Notification No. 5/2016 dated 6.4.2016 by Pr. DGIT (Systems) and CBDT Circular No.20 of 2016 dated 26.5.2016. He observed that the manual appeal filed by the assessee is not admissible as per provisions of section 249(1) of the Income Tax Act, 1961. Therefore, he dismissed the appeal treating the same as not maintainable and invalid ab inito.

7. At the time of hearing, Id A.R. of the assessee submitted that the assessee had filed appeal manually within time limit. The assessee was not aware of circular of CBDT and subsequent notification to file the appeal electronically. Before the CIT(A), the assessee requested for condonation of non-filing the appeal electronically, which was rejected on technical ground. He submitted that the CIT(A) has dismissed the appeal on technical ground without discussing the appeal on merits. He, therefore, prayed to direct the CIT(A) to condone for non-filing the appeal electronically and decide the appeal on merits. Id A.R. also filed an order dated 16.5.2018 of the Co-ordinate Benches of this Tribunal in the case of the assessee itself in ITA No.426/Mum/2018 for A.Y. 2010-2011, wherein, on similar facts, the Tribunal has directed the CIT(A) to admit the appeal filed by the assessee manually after condoning the delay and for decision afresh.

8. On the other hand, Id D.R. submitted that the fact that the assessee was not aware of the circular and notification of CBDT is an afterthought explanation, which should not be accepted.

9. We have carefully considered the rival submissions. We observe that it is a fact that the CBDT has mandated filing of appeal electronically by issuing Circular and Notifications and further subsequent notifications referred to above that the assessee is required to file electronically within the stipulated date. However, it is the contention of the assessee that that notification and circulars were not aware to the assessee and the appeal was filed manually. We have noted that in assessee's own case in the assessment year 2010-11, on similar facts, the Tribunal has directed the CIT(A) to condone non-filing of appeal electronically and decide the appeal on merits, inter alia, observing as under:

"7. Having heard both the sides, we find merits in the arguments of the assessee for the reason that during transition period the provisions of any notification or circulars mandating the assesses to follow certain instructions should not be strictly applied. We further noticed that the assessee has filed its appeal in manual form and such appeal has been filed within the prescribed time under the Income Tax Act, 1961. Therefore, we are of the considered view that merely because the assessee has not filed the appeal electronic form, the assessee's appeal cannot be dismissed on technical grounds that too during transition period. We further noticed that the Hon'ble Supreme Court and various High Courts have already categorically stated that when technicalities and substantial justice it pitted against each other , the substantial justice deserves to be prevailed over technicalities. Therefore, we are of the considered view that the Id CIT(A) was erred in dismissing the appeal filed by the assessee as not maintainable, hence, we set aside the issue to the file of the CIT(A) and direct him to admit the appeal filed by the assessee by directing the assessee to file its appeal in electronic format and also to condone the delay in filing such appeal in electronic format. We also direct the CIT(A) to decide the issues on merits."

10. Since the facts are identical, following the same, we direct the CIT(A) to condone the assessee for non-filing the appeal electronically

and decide the issue on merits after affording reasonable opportunity of being heard to both the sides.

11. In the result, appeal filed by the assessee is allowed.

Pronounced on 31/05/2019

Sd/-
(JUSTICE P.P. BHATT)
PRESIDENT

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Mumbai, Date : 31/05/2019

B.K.Parida, Sr.PS

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai