

आयकर अपीलीय अधिकरण "A" न्यायपीठ मुंबई में।

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

**BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.4012/Mum/2018

(निर्धारण वर्ष / Assessment Year : 2014-15)

M/s. ARA Law The Capital 1001-C, B Wing, BKC, Bandra (E), Mumbai-400051	बनाम/ v.	ACIT 16(2) Mumbai
स्थायी लेखा सं./PAN: AAAFA5712H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri. Satishchandra Rajore (DR)	

सुनवाई की तारीख /**Date of Hearing** : 01.07.2019

घोषणा की तारीख /**Date of Pronouncement** : 04.07.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 4012/Mum/2018, is directed against appellate order dated 28.03.2018 passed by learned Commissioner of Income Tax (Appeals)-5, Mumbai (hereinafter called "the CIT(A)") in Appeal No. CIT(A)-5/IT-267/ACIT-16(2)/2016-17, for assessment year (AY) 2014-15, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 19.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2014-15.

2. The grounds of appeal raised by assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

"1. a) The learned Commissioner of Income Tax (Appeal) ("CIT(A)") grossly erred in dismissing the appeal filed by the appellant merely on the basis of alleged default of not filling the appeal electronically.

b) In doing so the learned CIT(A) failed to appreciate that the default was technical in nature.

2. The appellant craves leave to add, alter, amend or delete any of the above referred ground of appeal."

3. The brief facts of the case are that assessee is a law firm. The case of the assessee was selected by AO for framing limited scrutiny under CASS u/s. 143(3) r.w.s. 143(2) of the 1961 Act. The return of income was filed electronically by assessee on 03.11.2014 declaring total income of Rs. 4,46,27,580/-. The AO made certain additions to the income of the assessee and assessment was framed by AO vide assessment order dated 19.12.2016 passed u/s 143(3) of the 1961 Act, computing income of the assessee at Rs. 5,21,49,550/-. The assessee filed first appeal with learned CIT(A) in time as stipulated u/s 249(2) of the 1961 Act i.e. within 30 days of service of assessment order, on 16.01.2017 as admittedly assessment order was served on the assessee on 19.12.2016 as admitted by assessee in Form no. 35, dated 10.01.2017 filed with learned CIT(A). However while filing first appeal with learned CIT(A) , the assessee admittedly made a technical breach by filing first appeal with learned CIT(A) in physical paper form in Form No. 35 instead of e-filing of appeal with learned CIT(A) in electronic form , which was required to be compulsory filed vide notification no. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL), dated 01.03.2016) and amendments in Income-tax Rules , 1962 wherein there was substitution of Rule no. 45 and Form no. 35 . The date for compulsory e-filing of appeal with learned CIT(A) was later

extended till 15.06.2016 , vide Circular no. 20 of 2016 dated 26.05.2016. This is undisputed fact the assessee filed first appeal with Ld. CIT(A) on 16.01.2017 in Form no. 35 in physical form instead of filing appeal with learned CIT(A) electronically as mandated under statute/rules. However , the appeal filed by assessee with learned CIT(A) in paper mode was otherwise filed within 30 days of service of assessment order passed by the AO. The Ld. CIT(A) dismissed the appeal of the assessee as same was not filed in electronic mode by relying on the provisions of Section 249(1) of the 1961 Act, vide appellate order dated 28.03.2018 passed by Ld. CIT(A).

4. Being aggrieved by dismissal of appeal by learned CIT(A) on the aforesaid grounds of technical breach , the assessee has now come in an appeal before the tribunal seeking condonation of this technical breach in filing first appeal in physical/paper mode with learned CIT(A) instead of electronically filing first appeal with Ld. CIT(A). None appeared on behalf of the assessee before the Bench when the appeal was called for hearing before the Bench. The letter dated 28.06.2019 is filed by the learned counsel for the assessee to grant adjournment.

5. The Ld. DR was confronted by the Bench that there is only a technical breach in filing of appeal with Ld. CIT(A) and tribunal has in past in several appeals had taken a consistent stand to condone this technical breach in filing of first appeal with learned CIT(A) in paper mode instead of e-filing which was made compulsory keeping in view that this was an initial switchover mode era with new regime of e-filing of appeal with learned CIT(A) coming into force, wherein tribunal in all those cases has restored the matter to file of Ld. CIT(A) with liberty to tax-payers to e-file appeal with learned CIT(A) afresh in electronic mode in compliance of amended statute/rules. The Ld. DR did not raised any objection if this technical breach is condoned and the matter can be restored to the file of the Ld. CIT(A) for fresh adjudication of the issue in appeal with liberty granted to assessee to

e-file appeal with learned CIT(A) afresh in compliance with modified statutory requirements.

6. We have considered contentions of Ld. DR and perused the material on record . None appeared on behalf of assessee but letter seeking adjournment is filed with no proper reasons. The said request of the assessee seeking adjournment stand rejected. We have observed that assessee is a law firm. The assessee e-filed its return of income on 03.11.2014 declaring total income of Rs. 4,46,27,580/- . The case of the assessee was selected for framing scrutiny assessment under CASS u/s 143(3) read with Section 143(2) of the 1961 Act. The scrutiny assessment was framed by AO, vide assessment order dated 19.12.2016 passed by the AO u/s. 143(3) of the 1961 Act, wherein income assessed was Rs. 5,21,49,550/- against returned income of Rs. 4,46,27,580/-. The said assessment order dated 19.12.2016 passed by AO u/s 143(3) of the 1961 Act was admittedly served on assessee on 19.12.2016 itself as admitted by assessee in Form No. 35 dated 10.01.2017 filed with learned CIT(A). Aggrieved by an assessment order dated 10.01.2017 passed by AO u/s 143(3), the assessee filed first appeal with learned CIT(A) on 16.01.2017 which was admittedly filed within a period of 30 days as stipulated u/s 249(2) of the 1961 Act. However while filing appeal with learned CIT(A), the assessee made a technical breach in filing its appeal with Ld. CIT(A) in physical paper form in Form No. 35 instead of e-filing of appeal with learned CIT(A) in electronic form , which was required to be compulsory filed vide notification no. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL), dated 01.03.2016) and amendments in Income-tax Rules , 1962 wherein there was substitution of Rule no. 45 and Form no. 35 . The date for compulsory e-filing of appeal with learned CIT(A) was later extended till 15.06.2016 vide circular no. 20 of 2016 dated 26.05.2016. This is undisputed fact the assessee filed first appeal with Ld. CIT(A) on 16.01.2017 in Form no. 35 in physical form instead of filing appeal with learned CIT(A) electronically as

mandated under statute/rules. Thus, in nutshell the assessee filed its appeal in time with learned CIT(A) in physical form but admittedly committed technical breach by not filing its appeal in electronic mode. These were the period which were initial phase of switch over of filing appeal with learned CIT(A) from physical mode to electronic mode. The assessee had filed its appeal with learned CIT(A) on 16.01.2017, which is within 8 months of coming into effect of new regime of e-filing of appeal with learned CIT(A). There was admittedly a technical infraction in filing appeal with learned CIT(A) in physical/paper mode but the said appeal with learned CIT(A) was filed in time as stipulated u/s 249(2) of the 1961 Act in physical/paper form which clearly establishes that the assessee was otherwise vigilant about its rights and duties . When technicalities are pitted against substantial justice, the settled proposition is that Courts will lean towards substantial justice unless malice is writ large. We donot find any malice in action of the assessee in filing appeal in paper/physical form with learned CIT(A) instead of e-filing its appeal , wherein appeal in physical form was filed in time as mandated u/s. 249(2). The assessee stands nothing to gain by filing its appeal in paper form with learned CIT(A) instead of e-filing its appeal with learned CIT(A). We condone this technical breach committed by assessee and grant liberty to assessee to file its appeal electronically with learned CIT(A) within 15 days of receipt of this order, if so desired by assessee. In case if the assessee files its appeal electronically with learned CIT(A) complying with mandatory requirements of statute/rules within 15 days of receiving of this order , then learned CIT(A) shall condone the delay and admit the appeal and then adjudicate the appeal on merits in accordance with law after giving proper and adequate opportunity of heard to the assessee. The appellate order dated 28.03.2018 passed by learned CIT(A) is set aside and matter is restored to the file of Ld. CIT(A) with above directions for adjudication of the appeal on merits in accordance with law. We clarify that we have not commented on the merits of the issues arising out of additions made by the AO. All the

contentions are kept open. Needless to say that learned CIT(A) shall grant proper and adequate opportunity of being heard to the assessee in accordance with principles of natural justice in accordance with law. We order accordingly.

7. In the result, appeal of the assessee in ITA No. 4012/Mum/2018 for AY 2014-15 is allowed for statistical purposes.

Order pronounced in the open court on 04.07.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 04.07.2019 को की गई

Sd/-

(C.N PRASAD)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 04.07.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI