

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

Before Shri G Manjunatha (ACCOUNTANT MEMBER)

AND

Shri Ravish Sood (JUDICIAL MEMBER)

ITA No. 3636/Mum/2018
(Assessment year : 2010-11)

M/s Hawa Valves (India) Pvt. Ltd. A/32, 3rd Floor, Nootan Nagar Premise, Guru Nanak Road, Mumbai-400050 PAN:-AABCH0359M	vs	ACIT, Range-12(2)(2), Mumbai
APPELLANT		RESPONDEDNT

Appellant by	Ms. Jigna Sheth & Mr. Jayesh Kala
Respondent by	Shri Manojkumar Singh CIT-DR

Date of hearing	10-06-2019
Date of pronouncement	28-06-2019

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against order of the CIT(A)-20, Mumbai, dated 29-03-2018 and it pertains to AY 2010-11. The assessee has raised the following grounds of appeal:-

"On the facts & in the circumstances of the case the Ld. Commissioner of Income Tax (Appeals) - 20 erred in dismissing the appeal on statistical ground and treating the papa-appeal filed as non est. The Ld CIT(A) -20 erroneously dismissed the appeal on the ground that manual appeal filed is invalid on the basis of notification No. S.O.637(E), although the assessee had filed the reasons vide letter dated 27.03.2018. The Learned CIT A -20 did not appreciate the fact that appeal for the captioned assessment

year was accepted by the office of the CIT (A) thus the manual appeal was deemed to be accepted. However the appellant in order to comply with the notification re-filed the same online on 28.03.2018. Such facts were provided to the learned CIT(A) 20. On the facts mentioned, the learned CIT(A) erred in dismissing the appeal without appreciating the facts of the case stated by the appellant and thus the order passed by the Ld CIT A is against the principles of natural justice and against the provisions of Income Tax Act and rules made thereunder and therefore should be quashed.

2) On the facts & in the circumstances of the case the Ld. AO erred in issuing notice u/s 148 based on change of opinion since the original assessment was completed u/s 143(3) on 07.12.2012 and accordingly the reopening of assessment is without understanding the facts & circumstances of the case & the reasons assigned for doing so are wrong & contrary to the provisions of the Income Tax Act & the rules made there under.

3) On the facts & in the circumstances, the Ld AO erred in passing the reassessment order without furnishing enclosure page for reasons recorded by the assessing officer and without passing any order of disposal of objections raised against the reasons recorded for reopening and accordingly the reopening of assessment is against the provisions of the Income tax Act & the rules made there under.

4) On the facts & in the circumstances of the case the Ld. AO erred in disallowing Rs 51,23,9747- out of purchases by alleging it as bogus without understanding the facts & circumstances of the case & the reasons assigned for doing so are wrong & contrary to the provisions of the Income tax Act & the rules made there under.”

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing and exporting of industrial valves, filed its return of income for Assessment Year 2010-11 on 10/10/2010, declaring total income at Rs.2,32,70,300/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) r.w.s. 147 of the Act 29/01/2016, determining the total income at Rs.2,83,94,270/- by making addition on account of purchases.

3. Aggrieved by the assessment order, assessee preferred appeal before the CIT(A) and such appeal has been filed in manual form on 04/03/2016 which is within the due date prescribed under the provisions of the Act. The CIT(A) dismissed appeal filed by the assessee ex-parte for non filing of appeal in electronic format as per the provisions of Rule 45 of I. T. Rules, 1962 which came into effect from 01/03/2016 and as extended by circular No.20 dated 26/05/2016. The Ld.CIT(A) observed that although the assessee was required to file appeal in electronic format within the due date prescribed by the CBDT, vide circular No.20 of 2016 dated 26/05/2016, but the assessee failed to avail such opportunity to file appeal in electronic format. Therefore, he opined that appeal filed by the assessee in manual form is not maintainable as per provisions of section 249(1) of I.T. Act and accordingly dismissed appeal filed by the assessee. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us.

4. We have heard both parties and perused the material available on record. We find that the Ld.CIT(A) has dismissed appeal filed by the assessee on technical ground of not filing appeal memo in form 35 in electronic format as required under the provisions of Rule 45 of I.T. Rules, 1962 which came into effect from 01/03/2016. The assessee has filed appeal in manual form on 04/03/2016 and such appeal filed by the assessee is within the time limit provided as per provisions of section 249(1) of the I.T. Act, 1961. The Ld.CIT(A) never disputed the above fact. But, the Ld.CIT(A) has dismissed the appeal filed by the assessee on the ground of not filing appeal in electronic format on or before the extended time by the CBDT, vide its circular No.20 of

2016 dated 26/05/2016 as per which the assesseees are allowed to file electronic forms. We find that during transitional period many assesseees were not aware of the provisions of the Act, and amendment brought to the statute for filing appeals in electronic format. Considering the hardship faced by the assesseees, the Tribunals and Courts have allowed or directed the appellate authorities to consider the appeals filed by the assesseees if such appeals are filed within the due date prescribed under the Act in manual form and not filed the appeals in electronic form as required u/r 45 of I.T. Rules, 1962. In this case, on perusal of facts available on record, we find that the assessee has filed his appeal within the due date prescribed under the Act in manual form. Therefore, considering the fact that the assessee would not have been aware of the fact of filing the appeal in electronic form on or after 01/03/2016 and to give another opportunity of hearing to the assessee to argue his appeal on merit, we set aside the order passed by the Ld.CIT(A) and restore the appeal back to the file of the Ld.CIT(A). The CIT(A) should direct assessee to file form 35 in electronic form if not filed so far. The assessee should file condonation application with proper reason alongwith appeal memo, if necessary.

5. In the result, appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 28/06/2019

Sd/-

Sd/-

(Ravish Sood)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 28/06/2019

Shekhar, Sr. P.S

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Asstt. Registrar, ITAT, Mumbai