

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No. 5591/Del/2018
Assessment Year: 2015-16**

**M/s Sporty Solutions P. Ltd.,
C/o MNA &Co.,CA
Plot No.38, LGF Pocket,
2 Jasola, New Delhi.
PAN: AAQCS3082B**

**vs ACIT, Circle-3,
Noida.**

(Appellant)

(Respondent)

**Appellant by: Shri Anil Bajaj, Advocate
Respondent by: Shri N.K. Bansal, Sr. DR**

Date of hearing: 8/7/2019

Date of order : 11/7/2019

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 31.5.2018 in Appeal No.404/2017-18/Noida, passed by the Ld. Commissioner of Income-tax (Appeals)-I, Noida (in short "Ld.CIT(A)", assessee preferred this appeal.

2. Brief facts of the case are that the assessee being a company is engaged in the business of sports marketing which includes distribution of sports rights, host broadcast, sponsorship and on-line

entertainment. For the Asstt. Year 2015-16, they have filed their return of income on 30.9.2015 declaring a loss of Rs.16,90,480/-. Learned AO by way of order dated 28.2.2017 made an addition of Rs.2 crores and assessed the income at Rs.1,83,09,520/-.

3. Aggrieved by the said addition, assessee preferred appeal before the CIT(A). Id. CIT(A) by order dated 31.5.2018 dismissed the appeal on the ground that the particulars are not available in Form 35 and the assessee had also not filed the impugned assessment order or the demand notice in original which is mandatory for admitting the appeal. Learned CIT(A) further observed that the assessee also has not placed on record a copy of the challan for the payment of fee for filing the present appeal.

4. Assessee is, therefore, before us in this appeal stating that assessee being a company is under obligation to file the appeal in Form 35 electronically and the assessee was required to upload all the requisite documents at the time of e filing of the appeal, without which the filing will not be complete. Assessee relied upon Rule 12(3) and 45(1) of the Income-tax Rules, 1961 ("the Rules") in support of his contention.

5. Per contra, Id. DR justified the order of the Id. CIT(A) stating that the assessee might have e –filed the appeal but requisite documents as observed by the Id. CIT(A) were not furnished and there is no proof that without such documents uploading the filing process will not be complete to generate the acknowledgment

receipt of Form 35. He submitted that without substantiating the claim of the assessee that the impugned order suffers any illegality or irregularity, it is not open for the assessee to challenge the same. For improper filing of the appeal, the assessee cannot maintain the same and the learned CIT(A) rightly dismissed the same as not admitted.

6. We have gone through the record in the light of the submissions made on either side. Rule 12(3) of the Rules vide Entry No.2 of the table stipulates that a company needs to file the return of income electronically under digital signature and Rule 45(2) says that in case of person who is required to furnish return of income electronically, shall furnish the appeal in Form No.35 also electronically under digital signature whereas Rule 45(4) says that any document accompanying Form No.35 shall be furnished in the manner in which such form is furnished.

7. There is no dispute that the assessee is a company covered by Rule 12(3)(ii) of the Rules under obligation to file the return of income electronically under digital signature and in view of the said stipulation covered by Rule 45(2)(a) and also 12(4) to submit the appeal to the Id. CIT(A) in Form No.35 electronically by furnishing the documents in the very same mode.

8. Along with appeal set, assessee furnished the copy of Form No.35 which contains the official seal of the department to show that it was available before the Id. CIT(A). Vide Column No.16, the details of fee paid were clearly mentioned with BSR Code as 636231, date of

payment as 22.2.2018 and S.No.01584. Further, the acknowledgement of receipt of Form No.35 produced before us clearly shows that such a form was filed electronically on 22.2.2018 and the acknowledgment generated by the system clearly shows that it being computer generated acknowledgement receipt needs no signature. Further, it is submitted on behalf of the assessee that besides uploading of the requisite documents electronically, without which the process would not be complete, a hard copy is enclosed with copy of Form No.35 filed before the CIT(A).

9. Though the impugned order says that Form No.35 does not contain the particulars, it is not specific as to which particular is missing. Further, when the assessee is mandatorily required to file the appeal in For, 35 electronically, it would be difficult to believe that there would be any occasion to miss any particular without which the system will accept the e-filing of the appeal in Form No.35 and generate the acknowledgement of receipt of For, 35. Further, a hard copy of Form 35 is filed before the Id. CIT(A) containing the particulars required by that form and we find it difficult to disbelieve the statement made on behalf of the assessee that the assessee should file the hard copy of Form 35 without any annexure which were submitted electronically. Rule 45 does not contemplate filing of the hard copy of Form 35 but, however, the assessee says that as a matter of prevention and for ready reference, they filed the hard copy.

10. Viewing from any angle, it occurs to our mind that details of Form No.35 and other documents missed the attention of the Id. CIT(A) while passing the impugned order and there was a substantial balance with the requirement of law by the assessee in filing the appeal before the CIT(A) electronically.

11. In this set of circumstances, we find it to be a fit case to set aside the impugned order and direct the Id. CIT(A) to consider on merits and pass a speaking order under law.

12. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11th July, 2019.

Sd/-

(O.P. KANT)

ACCOUNTANT MEMEBR

Dated 11th July, 2019

VJ

sd/-

(K. NARASIMHA CHARY)

JUDICIAL MEMBER

Copy forwarded to:

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

By order

Asstt. Registrar

Draft dictated	10.7.2019	
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Order signed and pronounced on		
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