

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

Before Shri R.C. Sharma (ACCOUNTANT MEMBER)

AND

Shri Pawan Singh (JUDICIAL MEMBER)

ITA No. 3830/Mum/2018  
(Assessment year : 2013-14)

Conwood Reality Pvt Ltd Yashodham, D.B. House Gen A.K. Vaidya Marg Goregaon (E), Mumbai-400 063 PAN :AADC2510Q	vs	The Dy.CIT-12(1)(2), Mumbai
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	None
Respondent by	Shri Choudhary Arunkumar Singh

Date of hearing	27-08-2019
Date of pronouncement	30-08-2019

**ORDER**

Per Pawan Singh, JM :

This appeal by assessee is directed against the order of CIT(A)-20, Mumbai dated 29-03-2018, which in turn arises from assessment order dated 31-03-2016 passed u/s 143(3) for AY 2013-14. The assessee has raised the following grounds of appeal:-

“The following grounds of appeal are without prejudice to one another:-

1. The CIT(A) erred in rejecting the appeal since the appeal was filed manually in paper form on 28.04.2016 against the order dated 31.03.2016 passed under section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2013-14 by the DCIT 12(1)(2), Mumbai.

2. It was further stated that since the appeal was filed after 01.03.2016 hence as per the Notification no. S.O.637(E) dated 1<sup>st</sup> March,2016 issued by CBDT, New Delhi, mandates compulsory e-filing of appeals. The Honorable GT (A)-20 also mentioned that a letter dated 22.03.2018 was issued asking the appellant to submit a reply by 28.03.2018 why this manually filed appeal should not be treated void ab initio.

3. The appellant humbly states that the above letter as mentioned by the CIT(A)-20 issued on 22.03.2018 was not received by them & hence prays that this order be set aside & the appellant be given a week to e-file the appeal.”

2. The brief facts of the case are that assessee is a private limited company engaged in the business of real estate development, filed its return of income for AY 2013-14 on 30-10-2013 declaring total income at a LOSS OF Rs.17.59 crores. Subsequently revised return was filed on 31-03-2015 revising the total loss to Rs.3.68 crores. The return of income was selected for scrutiny. The AO, after serving statutory notices u/s 143(2) and 142(1) completed the assessment u/s 143(3) on 31-03-2016. The AO made disallowance u/s 36(1)(iii) of Rs.1.05 crores, disallowance u/s 14A of Rs.61.52 lakhs, disallowance u/s 36(1)(va) of Rs.89,544 and addition u/s 68 of Rs.3.77 crores. Aggrieved by various additions / disallowances in the assessment order, assessee filed appeal before CIT(A) on 28-04-2016. The appeal of assessee was not admitted by Ld.CIT(A) on the ground that as per Rule 45A of Income-tax Rules, 1962, it was mandatorily required to file appeal electronically w.e.f. 01-03-2016. Further aggrieved by the order of Ld.CIT(A), the assessee has filed the present appeal before us.

3. None appeared on behalf of the assessee, when the matter was called up for hearing. Perusal of record reveals that assessee was served with the

notice of hearing of appeal on 03-07-2019. Therefore, we are left with no option except to hear the Ld.DR for the revenue and decide the appeal on the basis of material available on record.

4. The Ld.DR supported the order of CIT(A) and submitted that assessee was required to file appeal in electronic format as per Rule 45 of I.T. Rules. The assessee failed to file appeal electronically, therefore, the Ld.CIT(A) dismissed the appeal.

5. We have considered the submission and perused the order of Ld.CIT(A). We have noted that the assessment order was passed on 31-03-2016. The assessee filed appeal before Ld.CIT(A) on 28-04-2016 manually. The Ld.CIT(A) issued show cause notice to the assessee for not filing appeal electronically. The Ld.CIT(A) recorded that the assessee was given opportunity and to submit reply on 28-03-2018. No reply was received. The Ld.CIT(A) dismissed the appeal by treating it as non est. We have noted that in the grounds of appeal, the assessee has specifically stated that notice issued on 22-03-2018 was not received by them and, therefore, they could not comply with the show cause notice issued by the Ld.CIT(A). Considering the fact that Rule 45 of I.T. Rules was amended w.e.f. 01-03-2016. Moreover, there is no mandate or corresponding amendment in section 249 / 250 of the Income-tax Act, 1961. Moreover, the rule is made to

facilitate the assessee and not to condemn the party from granting opportunity of hearing. Therefore, considering the fact that assessee has filed appeal well within time though manually, we restore the appeal to the file of the Ld.CIT(A) to decide the appeal on merit. The assessee is directed to file appeal electronically. The Ld.CIT(A) is further directed to consider the appeal of the assessee on merit and decide the same in accordance with law.

6. In the result, appeal of the assessee is treated as allowed.

Order pronounced in the open court on 30-08-2019.

Sd/-

Sd/-

(R.C. Sharma)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 30<sup>th</sup> August, 2019

Pk/-

Copy to :

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

By order

Asstt. Registrar, ITAT, Mumbai