

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'A', HYDERABAD**

**BEFORE SHRI A. MOHAN ALANKAMONY,  
ACCOUNTANT MEMBER AND  
SHRI V. DURGA RAO, JUDICIAL MEMBER**

ITA No. 1094/Hyd/2018  
Assessment Years: 2008-09

Mohammed Shukoor, vs. Income-tax Officer,  
Hyderabad. Ward – 7(1), Hyderabad.

PAN – AQPPM 1887 L

Appellant

Respondent

Assessee by: Shri R.C. Yadav  
Revenue by: Shri R.S. Arvindakshan

Date of hearing: 17/10/2019  
Date of pronouncement: 25/10/2019

**ORDER**

**PER V. DURGA RAO, J.M.:**

This appeal filed by the assessee is directed against the order of CIT(A) – 3, Hyderabad, dated, 20/04/2018 for AY 2008-09.

2. Briefly the facts of the case are that assessee along with 19 others sold a property bearing Municipal Nos. 11-5-461 to 463 total admeasuring 1271 Sq.yards property known as 'Fareed Mansion' consisting of ground and upper floors, situated at Red Hills, Hyderabad for a consideration of Rs. 60,00,000/- vide document No. 669/2008 registered at SRO, Golconda, Hyderabad and buyers paid a stamp duty of Rs. 20,15,090/- on a market value of Rs. 2,23,91,000/-. The assessee has not filed return of income declaring the capital gains on the said transaction and, therefore, the AO issued a notice u/s 148 of the Act on 30/03/2015, which was served by

affixture and subsequently, notice u/s 142(1) was also served by affixture on the same address. Since there was no response from the said notices, the AO completed the assessment u/s 144 on a total income representing capital gain of Rs. 23,09,407/- vide his order dated 18/03/2016.

2.1 Thereafter, since the assessee failed to declare the said capital gain, the AO initiated penalty proceedings u/s 271(1)(c) and levied a minimum penalty of Rs. 4,98,385/-.

3. Aggrieved with the order of AO, the assessee preferred an appeal before the CIT(A) and the appeal was filed on 26/04/2016 in paper format and not e-filed.

4. The CIT(A) dismissed the appeal of the assessee in-limine on the ground that the assessee has not filed the appeal electronically, which is mandatory as per Circular No. 20/2016 dated 26<sup>th</sup> May, 2016.

5. Aggrieved by the order of CIT(A), the assessee is in appeal before us raising the following grounds of appeal:

*"1. The impugned order passed by the CIT(A) is much against the facts and contrary to the law and as such, the said appellate order is liable to be set aside.*

*2. The CIT(A) has totally failed to comprehend the impact and scope of Rule 45 of I.T. Rules, 1962 and has arbitrarily dismissed the appeal as not maintainable as the appeal ought to have been e-filed and not in paper form. The dismissal of appeal in limine is illegal, contrary to law and need to be reversed.*

*3. The CIT grossly misread and applied the Circular of CBDT under consideration as it to only those assesses, who are required to furnish return of income electronically under Sub-rule (3) of rule 12 namely assesses whose accounts are required to be audited and furnishing the return Electronically under digital. Further, sub-rule (b)(2) of Rule 45 (Form of Appeal to*

*Commissioner (Appeals) provides that in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub-rule (2) or in paper form. Thus the appeal filed by the appellant admittedly is not having business income and whose accounts are not required to be audited, in paper form is accordance with the provisions of the Income tax Act, 1961 and as such, the impugned order passed by the CIT(A) is liable to be set aside.*

*4.1N ANY EVENT, the appellant filed the appeal in paper form with the office of the Commissioner of income tax ( Appeals)-3,Hyderabad, and the CIT ought to have returned the appeal with the direction to file the same through e-filing without even whispering that it is not maintainable and dismissed the same in limine as the same was not e-filed in view of the Circular, which he relied on.*

*5. The CIT failed to notice that the only source of income of the appellant was from the capital gains and the provisions relating to filing of e-appeal had no application.*

*On the above grounds and such other ground(s) which may be urged at the time of hearing of appeal, it is prayed that the appeal may be allowed.”*

6. Considered the rival submissions and perused the material on record. We find that the CIT(A) dismissed the appeal of the assessee on technical grounds i.e. the assessee has not filed the appeal electronically and decided without going into the merits of the case.

6.1 On perusal of the Circular No. 20/2016, all the assesseees are advised to file the e-appeal and whoever filed manual appeal, they can file e-appeal before 15/06/2016 in order to treat the same as filed within time. We observe that this is compliance advise and the assesseees who are filing the e-appeal subsequent to 15/06/2016, they will be treated as appeal filed belatedly. Therefore, CIT(A) should not have dismissed the appeal in-limine, rather, he should have asked

the assessee to comply with the directions as per Circular No. 20/2016 and he could have given one more opportunity to assessee to e-file the appeal. We are not satisfied with the explanation offered by the assessee not to e-file the appeal. As per the CBDT Circular No. 20/2016, all the appeals have to be e-filed. Therefore, we direct the Assessee to file the appeal through e-filing and direct the CIT(A) to accept the e-appeal afresh and adjudicate the matter on merit. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

7. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 25<sup>th</sup> October, 2019.

Sd/-  
(A.MOHAN ALANKAMONY)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Hyderabad, dated 25<sup>th</sup> October, 2019.

*kv*

Copy forwarded to:

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5. *The DR, ITAT, Hyderabad*
6. *Guard File*

