

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI
BEFORE SHRI RAVISH SOOD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6382/MUM/2018
Assessment Year: 2013-14**

Late Shri Hansraj Popat Gala
Through L/H. Smt Leelavanti H.
Gala, Flat no.07, 2nd floor, Mahavir
Darshan Building, Opp. Navneet
Motor, Juhu Lane, Andheri (W),
Mumbai-400058.

Vs. Income Tax Officer 22(1)(5),
Room No. 404, 4th floor, Earnest
House, Mumbai-400021.

**PAN No. AABPG4071E
Appellant**

Respondent

Assessee by : Shri Bharin Parekh, AR
Revenue by : Shri K. Bhoopathi, DR

Date of Hearing : 11/11/2019
Date of pronouncement : 15/11/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2013-14. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-34, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under:

- "a. On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax-21, Mumbai, hereinabove referred to as the Id. CIT(A) has erred in assessing Total income of the Appellant at Rs.92,69,164/- instead of Rs.11,07,348/- as returned

by the Appellant. The returned income of the appellant may please be accepted.

- b. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in law has dismissed the appeal without considering the actual facts of the case due to technical issue of appeal filing. The said decision is not valid.
- c. All the grounds of Appeal are without prejudice to each other.
- d. The assessee craves leave to add, alter, and amend the grounds of appeal at the time of hearing.”

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2013-14 on 04.12.2013 declaring total income of Rs.11,07,348/-. The assessment was completed u/s. 143(3) dated 02.03.2016 by the Assessing Officer (AO) determine the income at Rs.92,62,160/-.

Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A) in manual form on 13.04.2016. It is observed by the Id. CIT(A) that the Central Board of Direct Taxes (CBDT) has prescribed mandatory e-filing of appeals of specified category of assessee's *vide* Notification no. SO 637(E) [F. No. 149/150/2015-TPL], dated 01.03.2016. Further, CBDT has made amendments in the Income Tax Rules, 1962 for substitution of Rule 45 and Form No. 35. The Id. CIT(A) further noted that it has become compulsory for those who are required to furnish their return of income electronically to also file their appeals before a CIT(A) on or after 01.03.2016. In this regard, he referred to the above notification stating that an appeal to the CIT(A) shall be made electronically in Form 35 under a digital signature/electronic verification code. Thus, observing that the manual appeal filed is not admissible as per provisions of section

249(1), the ld. CIT(A) treated the appeal as not maintainable and invalid *ab initio*. The ld. CIT(A) thus held that:

“5.3 The appellant is at liberty to file the appeal electronically as per provisions of Rule and seek condonation of delay in filing of appeal, which may be examined at the appropriate time.”

4. Before us, the ld. counsel for the assessee submits that since the appellant had died, to file the present appeal, there was a requirement to appoint the legal heir which required collection various documents such as letters for the bank, legal heir certificate etc. and therefore, the appeal was filed manually and the same was also accepted by the office of the CIT(A). Referring to the order dated 16.05.2018 of the ITAT “G” Bench, Mumbai in the case of M/s. Asterix Reinforced Ltd. v. ITO, [ITA No. 426/M/2018] for AY 2010-11, the ld. counsel submits that the CIT(A) be directed to admit the appeal to be filed in electronic format and the delay in filing such appeal be condoned.

On the other hand, the ld. Departmental Representative (DR) submits that the order passed by the ld. CIT(A) be affirmed as he has held that the appellant is at liberty to file the appeal electronically as per provisions of Rule and seek condonation of delay in filing of appeal.

5. We have heard the rival submissions and perused the relevant materials available on record. We find that a similar issue arose before the Tribunal in M/s. Asterix Reinforced Ltd (supra) and vide order dated 16.05.2018, the Bench held as under:

“6. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the CBDT has mandated filing of

appeal in electronic form after a certain date by issuing notification vide Notification No.SO 637(E) [No.11/2016 (F. No.149/150/2015-TPL)] dated 01.03.16 as per which the assessee is required to file form No.35 electronically. It is also an admitted fact that the CBDT has extended such due date of filing of appeal in electronic mode up to 15.06.16 considering the hardships/technical glitches in filing the appeal electronically. Admittedly, the assessee has filed its appeal in paper form on 29.04.16. The assessee claims that it is unaware of the notification issued by ITA No.426/M/2018 5 M/s. Asterix Reinforced Ltd. the CBDT for filing appeals in electronic format, therefore, it has filed its appeal in manual form on 29.04.16. The assessee further claims that during transition period the provisions of notification should not be applied strictly.

7. Having heard both the sides, we find merits in the arguments of the assessee for the reason that during transition period the provisions of any notification or circulars mandating the assessees to follow certain instructions should not be strictly applied. We further noticed that the assessee has filed its appeal in manual form and such appeal has been filed within the prescribed time under the Act. Therefore, we are of the considered view that merely because the assessee has not filed the appeal in electronic form, the assessee's appeal cannot be dismissed on technical grounds that too during transition period. We, further, noticed that the Hon'ble Supreme Court and various High Courts have already categorically stated that when technicalities and substantial justice is pitted against each other, the substantial justice deserves to be prevailed over technicalities. Therefore, we are of the considered view that the Ld. CIT(A) was erred in dismissing the appeal filed by the assessee as not maintainable, hence, we set aside the issue to the file of the Ld. CIT(A) and direct him to admit the appeal filed by the assessee by directing the assessee to file its appeal in electronic format and also to condone delay in filing such appeal in electronic format. We also direct the Ld. CIT(A) to decide the issues on merits."

6. Facts being identical, we follow the above order of the Co-ordinate Bench and restore the matter to the file of the Id. CIT(A) to admit the appeal to be filed in electronic format by the assessee and also to condone the delay in filing such appeal in electronic format and decide the issues on merits.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 15.11.2019

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 15/11/2019
Subhankar, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy. /Assistant Registrar)
ITAT, Mumbai