



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

BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA no.4495/Mum./2018
(Assessment Year : 2013-14)

Lokhandwala Foundations
Plot no.48, Indranarayan Road
Santacruz (W), Mumbai 400 054
PAN – AAATL0068K

..... Appellant

v/s

Income Tax Officer (Exemp.)
Ward-1(4), Mumbai

..... Respondent

Assessee by : Shri Rahul Hakani
Revenue by : Shri S. Michael Jerald

Date of Hearing – 12.12.2019

Date of Order – 13.12.2019

ORDER

PER M. BALAGANESH, A.M.

The present appeal has been filed by the assessee challenging the order dated 3rd May 2018, passed by the learned CIT(A)-7, Mumbai, for the assessment year 2013-14.

2. The grounds raised by the assessee are reproduced below:-

i) The learned CIT(A) erred in dismissing our appeal for statistical purposes on the ground that the appeal before him has been filed in paper form, whereas the same was required to be filed electronically in accordance with the procedure laid

down in Rule 45 and 46 of the Income Tax Rules, 1962, as substituted by the Income Tax (Amendment) Rules, 1962, with effect from 1st March 2016.

ii) The appellant submits that we have also filed the said appeal electronically on 15th March 2016, vide e-filing acknowledgment no.985817861150316, and copy of the same is attached herewith.

Without prejudice to the above, the appellant submits that, in the case of All India Federation of Tax Practitioners v/s ITO(E) the Hon'ble ITAT, Mumbai, upheld that filing of appeal electronically is only a technical consideration and thus the learned CIT(A) cannot dismiss the appeal solely on the ground that the assessee has not filed the appeal electronically. Copy of the said judgment is attached herewith.

iii) The Appellant craves leave to add, amend, alter or delete any or all the above grounds of appeal.

3. Brief facts are, the assessee is a trust filed its return of income electronically on 28th September 2013, declaring a total income at ₹ Nil. The assessee trust is registered as a Charitable Organisation with Director of Income Tax (Exemp.), Mumbai, under section 12A of the Income Tax Act, 1961 (for short "*the Act*") vide Registration no.TR/29336, dated 2nd March 1993. The assessee had accordingly claimed exemption under section 11 of the Act. The Assessing Officer completed the assessment under section 143(3) of the Act on 9th February 2016, and assessed income at ₹ 1,58,92,510. Being aggrieved, the assessee filed appeal before the first appellate authority.

4. The learned CIT(A), during the course of appellate proceedings, found that the assessee has filed an appeal manually, whereas the same was required to be filed electronically in accordance with the procedure laid down in Rule 45 and 46 of the I.T. Rules, 1962, as substituted by the Income Tax (Third Amendment) Rules, 2016, w.e.f. 1st March 2016, requiring the assessee to compulsorily file Form no.35, electronically w.e.f. 1st March 2016 which is covered by rule 12(3) of the said Rules. The learned CIT(A) accordingly dismissed the assessee's appeal and treated the said appeal as non est. However, he has given liberty to the assessee to file the appeal again electronically with a request for condonation of delay.

5. The leaned Counsel for the assessee submitted before us that the assessee has filed its return of income electronically vide e-filing acknowledgment no.985817861150316, and copy of which is placed on record. The learned Departmental Representative, on the other hand, relied upon the order of the learned CIT(A).

6. We have heard the rival contention and perused the material available on record. As per rule 45, introduced to the statute w.e.f. 1st March 2016, any appeal to be filed before the Commissioner of Income Tax (Appeals) under section 249(1) of the Act, has to be filed electronic form. Facts on record reveal that the assessee filed the

appeal before the Commissioner of Income Tax (Appeals) manually and later also filed the appeal electronically. In our opinion, when the assessee has filed the appeal manually within the prescribed period of limitation, the learned CIT(A) should not have dismissed the appeal in limine for a mere technical breach. Rather he should have provided an opportunity to the assessee to file the appeal electronically and decided the appeal on merit. Considering the above, we direct the learned CIT(A) to admit the appeal already filed in electronic form. We also direct that the learned CIT(A), while condoning the delay, shall decide the appeal on merit after providing reasonable opportunity of being heard to the assessee. With the aforesaid observations, the grounds raised are allowed for statistical purposes.

7. In the result, appeal is allowed for statistical purposes.
Order pronounced in the open Court on 13.12.2019

Sd/-
MAHAVIR SINGH
JUDICIAL MEMBER

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

MUMBAI, DATED: 13.12.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai