

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "I-1" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.3931/Del./2016
Assessment Year 2009-2010

M/s. Global Green Company Limited, Thaper House, 124 Janpath, New Delhi – 110 001. PAN AAACR0635H (Appellant)	vs	The DCIT, Circle – 10 (1), New Delhi. (Respondent)
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For Assessee :	Shri Ankit Agarwal, C.A.
For Revenue :	Shri Subha Kant Sahu, Sr. D.R.

Date of Hearing :	16.12.2019
Date of Pronouncement :	16.12.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-37, New Delhi, Dated 10.05.2016, for the A.Y. 2009-2010.

2. In this case the A.O. passed the assessment order under section 143(3) r.w.s. 144C of the I.T. Act, 1961 vide assessment order Dated 23.05.2013. The assessee, however,

filed the appeal before the Ld. CIT(A) on 16.01.2014. The assessee's submissions are recorded in the impugned order. The Ld. CIT(A), however, in the absence of any specific application for condonation of delay and considering the material on record, dismissed the appeal of assessee holding it to be time barred.

3. We have heard the Learned Representatives of both the parties and perused the material on record.

4. Learned Counsel for the Assessee pointed-out that the assessee has filed the appeal within the period of limitation. The assessee in Form-35 filed before the Ld. CIT(A) has mentioned 19.12.2013 as date of service of impugned order. He has submitted that in this case draft assessment order under section 144C was passed on 15.03.2013 [PB-1]. The assessee filed objections before A.O. on Dated 12.04.2013 [PB-6] stating therein that the objections are filed against the draft assessment order and in case the objections of the assessee are not accepted, the will prefer an appeal before the Commissioner of Appeals. Learned Counsel for the Assessee referred to letter Dated

19.06.2013 [PB-8] in which the assessee addressed the letter to the A.O. stating therein that assessee filed objections against the draft assessment order in which it was stated that in case objections of the assessee are not accepted, assessee will prefer an appeal before the Commissioner of Appeals. It was further explained that till date assessee company has not received any final assessment order under section 143(3). The assessee, therefore, requested that final assessment order may be provided to the assessee. He has submitted that no such assessment order have been provided to the assessee. PB-9 is online RTI request in which assessee similarly stated that since assessment is concluded in March, 2013, however, assessee company has not received any final assessment order. The assessee, therefore, sought to provide date of assessment order and date of service and dispatch of assessment order to assessee company, but, no reply to RTI application have been given to assessee. Learned Counsel for the Assessee referred to other notices issued under section 271(1)(c) of the I.T. Act and reply to the A.O. in

which similar address of the assessee have been mentioned. Learned Counsel for the Assessee submitted that case of the Department had been that the final assessment order have been served upon the assessee through affixture, copy of which is filed at page-25 of the PB Dated 30.05.2013. Learned Counsel for the Assessee submitted that it is nowhere provided if Department made any attempt to serve the assessee personally and that there is no witness to the affixture report, therefore, affixture report is invalid. He has relied upon Order of ITAT, Mumbai Bench in the case of Ketan V Shah vs., ACIT, Central-11, Mumbai [2010] 7 taxmann.com 88 (Mum.) in which it was held that “*without exhausting other ordinary mode of services, service through affixture is not proper service.*” Learned Counsel for the Assessee, therefore, submitted that since assessee applied for copy of the assessment order within the period of limitation, therefore, Ld. CIT(A) should not have dismiss the appeal of assessee *in limine*.

5. On the other hand, Ld. D.R. relied upon the Order of the Ld. CIT(A) and submitted that since assessee

has been served the Order through affixture and appeal is filed belatedly, therefore, appeal of assessee may be dismissed.

6. We have considered the rival submissions. It is not in dispute that address of the assessee as per assessment order is same as have been mentioned in the Form No.35 before the Ld. CIT(A) which is also mentioned in the appellate order. The facts above clearly show that assessee filed objections against the draft assessment order and explained that in case objections of the assessee are not accepted, then the final assessment order may be provided to the assessee for filing appeal before the Commissioner, Appeals. The assessee filed letter Dated 19.06.2013 and requested for copy of the final assessment order. However, no Order have been supplied to the assessee. Even no reply to the RTI application have been provided to the assessee. The assessee has, however been later on provided copy of the final Order Dated 19.12.2013. This fact is also mentioned by the assessee in Form No.35 of the impugned Order served upon the assessee on 19.12.2013. According

to this date the appeal of assessee is filed within the period of limitation. However, the Revenue contended that assessee have been served through affixure on 30.05.2013, but, nothing is produced before us if any, attempt have been made by the A.O. to serve the assessee through registered post or through personally before serving the notice through affixture. Even the affixture report did not show if the same is witnessed by any independent person. Since address of the assessee is correct as per affixture report as well as address mentioned in the impugned orders, there is no question of serving the assessee through affixture against the address of the assessee is correct. These facts clearly show that assessee has not been served with the impugned assessment order in ordinary course of business. It is also a fact that assessee applied before A.O. on 19.06.2013 for copy of the final assessment order Dated 23.05.2013. Thus, the assessee applied copy of the assessment order within the period of limitation for filing appeal before the Commissioner (Appeals). The A.O. did not supply copy of the assessment order to the assessee on this request till

19.12.2013. Therefore, during the period when no copy of the Order have been supplied to the assessee, the same cannot be reckoned against the assessee. Considering the totality of the facts and circumstances of the case, it is clear that the impugned order have not been served upon the assessee through affixture as is alleged by the Revenue Department since assessee received copy of the Order only on 19.12.2013 while making a request on 19.06.2013 within the period of limitation, therefore, appeal is filed within the period of limitation before the Ld. CIT(A).

6.1. We may also note here that Ld. CIT(A) rejected the claim of assessee because no application for condonation of delay and affidavit have been filed. The Ld. CIT(A), however, noted in the appellate order that assessee in the statement of fact has clearly mentioned for condonation of delay in filing the appeal and narrated all the relevant facts therein to explain the delay in filing the appeal as is considered above. It is well settled Law that the Ld. CIT(A) being the quasi judicial authority need not to go on technicalities. Once sufficient material is available on

record and assessee made a request for condonation of delay in statement of facts, that is sufficient for Ld. CIT(A) to deal with the submission of the assessee whether to the condone the delay in filing the appeal or not ? Therefore, such is not a relevant reason to reject the claim of assessee. Considering the above discussion, it is clear that appeal of assessee was filed within the period of limitation. Therefore, there is no occasion for the Ld. CIT(A) to hold that appeal of assessee is time barred and should not be admitted to decide on merits. In this view of the matter, we set aside the impugned order of the Ld. CIT(A) and hold that appeal filed by the assessee before the Ld. CIT(A) is within the time. Accordingly, appeal of assessee is restored to the file of Ld. CIT(A) with a direction to re-decide the appeal of assessee on merits and in accordance with law, by giving reasonable, sufficient opportunity of being heard to the Assessee and the A.O. Accordingly, appeal of Assessee is allowed for statistical purposes.

7. In the result, appeal of Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 16th December, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "I-1" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.