

IN THE INCOME-TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI S. RIFAUR REHMAN, ACCOUNTANT MEMBER
ITA No. 7031/Mum/2018 (Assessment Year 2013-14)

Sriram Kapur, 199, Churchgate Reclamation, Mumbai-20. PAN: AAIPK3526B	Vs.	ACIT 17(3) 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.
Appellant		Respondent

Appellant by : None
Respondent by : Shri V. Vinod Kumar (Sr. DR)
Date of Hearing : 16.01.2020
Date of Pronouncement : 16.01.2020

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of learned Commissioner of Income tax (Appeals) [Id. CIT(A)]-28, Mumbai dated 20.11.2018 for Assessment Year 2013-14.
2. Brief facts of the case are that the assessee filed return of income for Assessment Year 2013-14 on 30.07.2013 declaring income of Rs. 66,83,900/-. The case was selected for scrutiny. In the computation of income the assessee declared Short Term Capital gain of Rs. 11,12,216/- . The Assessing Officer after affording opportunity to the assessee completed under section 143(3) on 19.03.2016. The Assessing Officer treated the Short Term Capital Gain (STCG) as Business Income. Aggrieved by the addition/treatment of STCG as Business Income, the assessee filed appeal before the Id. CIT(A) on 12.04.2016. The assessee

filed appeal manually/paper appeal. The appeal of assessee was not admitted by Id. CIT(A) by taking view that Central Board of Direct Taxes (CBDT) vide its Notification No. SO 637(E) [11/16 (F. No. 149/150/2015-TPL)] mandatory made the filing of appeal electronically for certain specific category of assesses. The assessee falls within those specified category. Since, appeal of assessee was not admitted and treated as dismissed vide order dated 20.11.2018. Further, aggrieved the assessee has filed the appeal before us. The assessee has raised the following grounds of appeal:

1. The Ld. Commissioner of Income (A) [CIT(A)] has erred in law and in facts in dismissing the appeal on technical ground of not filing electronically without condoning the delay in e-filing the appeal.
 2. The Ld. CIT(A) has erred in law and in facts in confirming the assessment order and additions without giving effective opportunity of hearing to the appellant. The order has been passed without observing principles of natural justice.
 3. The Ld. CIT(A) has erred in law and in facts in confirming the assessment of Short Term Capital Gain income amounting to Rs. 11,12,216/- under the head "Income from Business".
 4. The Ld. CIT(A) has erred in law and in facts in not expressly allowing the Long Term Capital Loss u/s 74 of the Act amounting to Rs. 4,64,460/- to be carried forward for set off.
 5. The Ld. CIT(A) has erred in law and in facts in not appreciating that the expenses incurred in relation to income assessed as business income be allowed as deduction.
3. None appeared on behalf of assessee. The assessee filed an application dated 09.01.2020 for seeking adjournment on the ground that he is not keeping well. Keeping in view the smallness of the matter, the

application for adjournment by of assessee was rejected and it was decided to adjudicate the appeal on the basis of material on record. Accordingly, the Id. DR was asked to make his submission.

4. The Id. DR relied upon the order of Id. CIT(A).
5. We have considered the submission of Id. DR for the revenue and perused the order of lower authorities. Though the assessee has raised as many as 5/6 grounds of appeal, however, in our considered view, the short question for our consideration is if the assessee deserve hearing on merit before the Id. CIT(A)/first Appellate Authority, when the assessee filed appeal manually instead of electronically. We are conscious of the fact that if the Notification No. SO 637(E) [11/16 (F. No. 149/150/2015-TPL], the apex body of revenue i.e. CBDT prescribed mandatory e-filing of appeal of specific category of assessee. The assessee is one of such person fall in such specified category of assessee. However, the assessee filed appeal manually. Perusal of para-5.1 of the impugned order reveals that the assessee has also filed appeal electronically on 15.11.2018 vide Acknowledgement No. 37596591151118 which has been treated as separate appeal for consideration in due course.
6. Filing of appeal before the First Appellate Authority/CIT(A) is prescribed under section 249 of Income Tax Act. There is no mandate in section 249 to file electronically; however, the revenue has amended the corresponding Rule 45 for making mandatory e-filing of appeal for

specified category of assesses. The filing of appeal is made mandatory only from 01.03.2016. There is no express mandate under Rule 45 to first appellate authority to dismiss the appeal in case the appeal is not filed electronically.

7. In our view, the Rules are enacted to facilitate the assessee and the same should not be used as a tool and techniques to deprive the assesses from their right of hearing. Considering the fact that appeal of assessee was rejected due to technical reason and without considering the merit of the case. Therefore, the order passed by Id. CIT(A) dated 20.11.2018 is set-aside and all the grounds of appeal raised by assessee are restored to the file of Id. CIT(A) to decide all the grounds of appeal raised by assessee afresh on merit. Needless to order that before deciding the appeal on merit the Id CIT(A) shall grant opportunity of hearing to the assessee. We may made it clear that in case appeal filed electronically vide Acknowledgement dated 15.11.2018 has not been decided, the same shall be decide after treating the date of institution as on 12.04.2016 in placed of 15.11.2018.

8. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 16/01/2020.

Sd/-
S.RIFAUR RAHMAN
ACCOUNTANT MEMBER

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Mumbai, Date: 16.01.2020
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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

BY ORDER,

**Dy./Asst. Registrar
ITAT, Mumbai**