

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6781/Mum/2018  
(Assessment Year :2010-11)**

Deepak Raheja 4 <sup>th</sup> Floor, Raheja Chamber Linking Road & Main Avenue Santacruz (West) Mumbai-400 054	Vs.	ACIT-25(2) Room No. 508,BKC Pratyakshkar Bhawan Bandra(E) Mumbai-400 051
<b>PAN/GIR No.ADQPR7160R</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Shri Kamal Mangal, JCIT-DR
Assessee by	None
<b>Date of Hearing</b>	<b>14/01/2020</b>
<b>Date of Pronouncement</b>	<b>22/01/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals)-34, Mumbai, dated 30/08/2018 and it pertains to Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal.

*The Learned CIT(A) erred in law and under the circumstance of case by*

1) 1.1) *Holding appeal filed by assessee as invalid and ab-initio.*

1.2) *Not admitting the appeal filed in time manually on 18.04.2016 due to delay in filing appeal electronically in order to comply the Circular dt. 01.03.2016.*

1.3) *Not admitting the appeal u/s 249(1) due to delay in filing the appeal electronically on 29.08.2018.*

2) 2.1) *The order passed by the Learned Assessing Officer u/s 143(3) rws 147 is bad in /aw.*

2.2) *The Learned Assessing Officer failed to take into account the fact that in the original assessment completed u/s 143(3) the Assessing Officer had duly noted that the disallowance as per working u/s 14A rwr 8D would be Rs.1,17,60,327/- but after application of mind limited the disallowance to Rs.21,11,866/-which was the same as the total expenditure incurred by the appellant, The reopening of the said original assessment only for the purpose of enhancing the disallowance to Rs.1,17,60,327/- is due to change of opinion and the reassessment is invalid on that ground.*

2.3) *The Learned Assessing Officer failed to follow the decision of the Jurisdictional High Court in Asian Paints Ltd vs. DCIT - 308 ITR 195 Bom. that mere change of opinion is not a ground for reassessment.*

2.4) *It is prayed that*

a) *Assessee has filed the appeal In time on 18.04.2016. However, delay in filing appeal by electronically is technical / procedural default, therefore, CIT(A) should have admitted the appeal filed manually in time and should have condoned the delay of filing appeal by electronically on 25.08,2018.*

b) *The reassessment order passed by the Assessing Officer may be held as void.*

c) *The disallowance of Rs.96,48,461/- made u/s 14A over and above the disallowance of Rs.21,11,866/- already made In original assessment order may please be deleted.*

3. The brief facts of the case are that the assessee has filed his return of income for AY 2010-11 on 28/09/2010, declaring total income at Rs. 3,65,93,723/-. The assessment has been completed u/s 143(3) on 28/03/2013, determining the total income at Rs. 4,07,37,650/-. Thereafter, the case has been reopened u/s 147 of the I.T.Act, 1961 by issuing notice u/s 148, dated 25/02/2015. The assessment has been completed u/s 143(3) r.w.s. 147 of the I.T.Act, 1961 on 31/03/2016, determining the total income at Rs. 5,03,86,110/-, by making additions towards disallowances of expenses attributable to earning of income, which does not form part of total income u/s 14A of the Act, for Rs. 96,48,461/-.

4. Aggrieved by the assessment order, the assessee has filed an appeal before the Ld.CIT(A) on 18/04/2016 and such appeal has been filed in manual form. The Ld.CIT(A) dismissed appeal filed by

the assessee *in-lumine* for not filing the appeal in electronic form as required under, amended Rule 45 of the I.T.Rules, 1962, which mandates filing of appeal in electronic form on or after 01/03/2016. Further, the CBDT had issued a circular No. 20/2016, dated 26/05/2016 and extended such due date till 15/06/2016. Therefore, from the above amended Rules 45 of the I.T.Rules, 1962 and the circulars of CBDT, it is mandatory to file all appeals before the Ld.CIT(A) in electronic form on or after 15/06/2016. Since, the assessee has filed an appeal in manual form, the Ld.CIT(A) has dismissed appeal filed by the assessee, on the ground that the said appeal is not maintainable in view of amended Rules, as well as the CBDT circulars and accordingly, dismissed appeal filed by the assessee. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. None appeared for the assessee. We have heard the Ld. DR and perused the materials available on record along with orders of the Ld.CIT(A). We find that the Ld.CIT(A) has dismissed appeal filed by the assessee *in-lumine* on technical ground for not filing appeal in electronic form as per amended Rule 45 of the I.T.Rules, 1962, as well as CBDT circular No. 11/2016, dated 01/03/2016 and 20/2016 dated 26/05/2016, although, the assessee has filed appeal within the prescribed time allowed under the Act in manual form. The assessee has explained the reasons for not filing appeal in electronic form before the Ld.CIT(A), as per which the assessee was not aware of the amended Rule 45 of the I.T.Rules, 1962, which mandates filing of appeals in electronic form. Further, when the said lapses has been brought to the notice of the assessee, it has filed appeal in electronic form on 29/08/2018. But the Ld.CIT(A) has dismissed

appeal filed by the assessee, on the ground that said appeal is not maintainable, as per the provision of section 249(1) of the Act. No doubt, the law has been amended, so as to file appeal in electronic form after certain dates and as per which, all appeals are required to be filed in electronic form only. But, when the assessee has explained the reasons for not filing appeal in electronic form and said reasons are bonafide, then the Ld.CIT(A) ought to have considered the explanation of the assessee, condone the delay in filing of appeal and dispose-off the appeal on merits in accordance with law, because, the assessee has filed appeal in manual form within the due date prescribed under the Act. Therefore, we are of the considered view that when, the assessee has filed an appeal in manual form within the prescribed time allowed under the Act and also, rectified the lapses, as and when said lapses has been brought to his notice, the appeal of the assessee cannot be dismissed on technical grounds that too during transition period.

6. We further noticed that the co-ordinate bench of ITAT, Mumbai 'G' bench, in the case of M/s. Asterix Reinforced Ltd.,vs ITO in ITA No. 426/Mum/2018 had considered an identical issue and after considering relevant facts has restored the appeal to the file of the Ld. CIT(A) and direct him to condoned delay in filing appeal in electronic form and to decide the issue on merits in accordance with law. The relevant findings of the Tribunal are 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 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."*

7. In this view of the matter and respectfully following the decision of co-ordinate bench of Mumbai in the case of M/s. Asterix Reinforced Ltd.,vs ITO in ITA No. 426/Mum/2018, we restored the issue back to the file of the Ld.CIT(A) and direct him to admit the appeal filed by the assessee and decide the issue on merits in accordance with law.

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

Order pronounced in the open court on this 22/01/2020

**Sd/-**  
**(SAKTIJIT DEY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/01/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai