

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

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

**ITA No.7420/Mum/2018  
(Assessment Year :2013-14)**

Mudassir Rashid Ahmed Bakhla Makker & Co. Shop No.7/B, Shamji Morarji Building Champsai Bhimji Road Mazgaon Mumbai-400 010	Vs.	ITO-17(2)(4) Aaykar Bhawan Mumbai-400 020
<b>PAN/GIR No.AELPB9504K</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Revenue by	Smt. Jyotilakshmi Nayak, DR
Assessee by	Ms. Neha Paranjpe, AR
<b>Date of Hearing</b>	<b>21/01/2020</b>
<b>Date of Pronouncement</b>	<b>29 /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)-58, Mumbai, dated 16/10/2018 and it pertains to Assessment Year 2013-14.

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

1. *The Order of the Assessing Authority passed on 22/02/2016 and on dated 03/03/2016, the Appeal before the CIT(A) was filed. The said appeal was filed in proper time i.e on 03/03/2016.*

2. *During the course of hearing the CIT(Appeal) raised the issue that the appeal was not e-filed on time as per CBDT guidelines which is in correct. It has requested that same should be accepted as the manure line the appeal is in in proper time but the CIT(Appeal) reject the same on technical ground*

*and no merit was discussed. The order for rejection was filed as inadmissible on the ground that same is not E-filed.*

3. The brief facts of the case are that the assessee has filed his return of income for AY 2013-14 on 05/01/2014, declaring total income at Rs. 9,44,630/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961, on 22/02/2016, determining the total income at Rs. 13,08,590/- by making additions towards adhoc disallowances of 10% business promotion expenses and travelling expenses of Rs. 63,960/- and additions of Rs. 3 Lacs towards investment in land at Karjat, as unexplained investments. The assessee carried the matter in appeal before the first appellate authority. The Ld.CIT(A) for the reasons recorded in his appellate order, dismissed appeal filed by the assessee for non filing appeal in electronic form, as required under Rules 45 & 46 of I.T.Rules, 1962. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that an identical issue has been considered by us in ITA No. 6781/Mum2018, in the case of Deepak Raheja, where under identical set of facts, the issue has been set aside to the file of the Ld.CIT(A) and direct him to admit appeal filed by the assessee and to decide the issues involved in appeal on merits in accordance with law. The relevant findings of the Tribunal are as under;-

*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 assessee 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.*

5. In this view of the matter and respectfully following the decision of co-ordinate bench of ITAT, in the case of Deepak Raheja in ITA No. 6781/Mum/2018, we restored the issue to the file of the Ld.CIT(A) and direct the Ld.CIT(A) to decide the issues on merits in accordance with law. The assessee shall file, the appeal in electronic form within "10" days from the date of receipt of this order, if appeal is not filed in electronic form.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purpose.

Order pronounced in the open court on this 29 /01/2020

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

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

Mumbai; Dated : 29/01/2020  
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