

**IN THE INCOME TAX APPELLATE TRIBUNAL “E”
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 3068/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

Mr. Edul P. Bharucha, 201, Savla Chambers, 40, Cawasji Patel Street, Mumbai – 400 001	बनाम/ Vs.	ACIT -16(1), Aayakar Bhavan, M.K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AACPB3201G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Yazad D. Bajan, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Shri Amit Pratap Singh, DR
सुनवाईकीतारीख/ Date of Hearing	:	16.10.2019
घोषणाकीतारीख / Date of Pronouncement	:	06.11.2019

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 5 in short referred as ‘Ld. CIT(A)’, Mumbai, dated 28.03.18 for Assessment Year (in short AY) 2013-14.

2. The brief facts of the case are that the assessee is a practicing advocate, filed its return of income on 27/09/2013 for the assessment year 2013-14 declaring income of Rs. 5,36,63,870/-. The return was processed u/s 143(1) and same was manually selected for scrutiny. Accordingly, notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for. After verifying the relevant documents, AO made certain disallowances u/s 14A r.w.r. 8D of the Act.

3. Aggrieved by the order of the Ld. A.O., assessee filed an appeal manually, before the Ld. CIT(A). The Ld. CIT(A) observed that the assessee is required to file the appeal electronically which is mandatory and since the assessee had not filed the return of income electronically he dismissed the assessee's appeal *in limine*.

4. Aggrieved by the Order of the Ld. CIT(A), assessee is in appeal before us.

5. The Learned Counsel for the Assessee submitted that this was the first year in which the assessee was required to file the appeal electronically, but the assessee has filed the appeal manually within the time limit prescribed in the Statute. He prayed that an opportunity for filing the appeal electronically may be granted and thereafter, the appeal may be decided on merits.

6. The Learned Departmental Representative, on the other hand, argued in supported of the order of the CIT(A).

7. Having regard to the rival contentions and the material on record, we find that this is the first year where the appeal was required to be filed before the Ld. CIT(A) electronically, however, the assessee has filed the appeal within the time before the CIT(A) manually and not electronically. Under similar circumstances, the Hon'ble jurisdictional High Court has considered the very same issue in W.P.No. 21099/2018 in the case of M/s. Rayalaseema Bullion and Commtrade Private Limited vs. CIT(A)-3, Hyderabad wherein the Hon'ble High Court has directed the assessee to e-file its appeal within the

stipulated time prescribed in the Order and the CIT (A) was directed to consider the same and adjudicate the appeal on merits. The Decision of the Hon'ble jurisdictional High Court was also followed by this Bench of the Tribunal in ITA No. 862/Hyd/2018 vide Order dated 12/03/2019 for the assessment year 2011-12. For the sake of ready reference, relevant portion of the Order of the Hon'ble jurisdictional High Court is extracted herein below for reference:-

“The grievance of the petitioner company in this case is with regard to the action of the Commissioner of Income Tax (Appeals)-3, Hyderabad, the first respondent herein, in passing order dated 12/03/2018 in ITA No.0152/ITO-3(2)/Hyd/CIT(A)-3/2016-17, in relation to the assessment year 2013-14, whereby the petitioner-company's appeal was dismissed in limini on the ground that it had failed to e-file the said appeal as mandatorily required.

Having received instructions in the matter, Sri Vinod Kumar Tadakamalla, Learned Senior Standing Counsel for the Revenue, would inform this court that the assessment order under appeal

before the first respondent was dated 29/03/2016 and was received by the petitioner company on 04/04/2016. Aggrieved thereby, the petitioner company filed an appeal manually on 03/05/2016. While so, Rule 45 of the Income Tax Rules, 1962 (for brevity, the Rules of 1961) was amended with effect from 01/03/2016 requiring filing of appeals in e-format. However, owing to the glitches in implementation of this new procedure, the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, issued Circular No.20/2016 dated 26/05/2016 seeking to mitigate the inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing of appeals and extended the time limit for filing of the appeals which were to be filed by 15/05/2016 up to 15/06/2016. The Board further directed that all e-appeals filed within the extended period should be treated as appeals filed within time.

In the case on hand, it appears that the appeal filed by the petitioner company was not returned on the ground that it had not been e-filed in terms of the amended Rule 45 of the Rules of 1962. Having kept the appeal pending after

numbering it, the Appellate Authority ultimately dismissed it on the ground that it was not e-filed. When the Central Board of Direct Taxes itself saw it fit to extend the time for e-filing of appeals, had the appeal filed by the petitioner company been returned on the ground it was not filed as per the due procedure, the petitioner company could have taken steps to file it within the extended time. As the appeal was not returned to it and was numbered, on the other hand, the petitioner company was under the belief that its appeal would be entertained. This being the fact situation, the petitioner company cannot be penalized for not resorting to e-filing of its appeal within the extended time as stipulated by the Board.

In such circumstances, the writ petition is allowed to the extent of setting aside the order dated 12/03/2018 passed by the first respondent in ITA No. 0152/ITO-3(2)/Hyd/CIT(A)-3/2016-17. The first respondent shall return the subject appeal to the petitioner company within one week from the date of receipt of a copy of this order and thereupon, the petitioner company shall e-file its appeal in accordance with the due procedure

within two weeks thereafter. In the event the petitioner company files its appeal through e-format as directed supra, the appellate Authority shall consider the said appeal on its own merits without reference to the limitation aspect as it is an admitted fact that the said appeal was originally filed within time. The petitioner company is at liberty to raise additional grounds in the said appeal at the time of personal hearing.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.”

8. Respectfully following the decision of the Hon'ble jurisdictional High Court (supra), we hereby grant liberty to the assessee to file its appeal electronically within two weeks from the date of receipt of this Order, if the appeal is not already filed electronically until this day, and if the appeal is filed within such period, the Ld. CIT(A) shall dispose of the appeal on merits after providing the assessee with proper opportunity of being heard within reasonable time without reference to the limitation aspect as it is an admitted fact that the appeal was originally filed

manually within the time limit stipulated under the Act. It is ordered accordingly.

9. In the net result, the appeal of the assessee is treated as **allowed for statistical purposes** as terms indicated hereinabove.

Order pronounced in the open court on 6th Nov 2019.

<i>Sd/-</i> (Ravish Sood) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 06.11.2019
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai