

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6443/Del/2018
(Assessment Year: 2007-08)

Montreaux Resorts Pvt Ltd, Top Floor, Mohandev Building, 13, Tolstoy Marg, New Delhi PAN: AAECM8369D	Vs.	ITO, Ward-17(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Deepesh Jain, Adv
Revenue by:	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	10/02/2020
Date of pronouncement	22/05/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-6, New Delhi dated 13.08.2018 for the Assessment Year 2007-08.
2. The assessee has raised the following grounds of appeal:-

"1. That on facts and circumstances of the case, the impugned order passed by the Commissioner of Income Tax (Appeals) [‘CIT(A)'] dismissing the appeal filed by the appellant against order under section 147/ 144 of the Income Tax Act, 1961 ("the Act") in paper form (hereinafter referred to as "paper appeal") in limine as not maintainable on the ground that appeal had not been filed electronically, is illegal and bad in law.

1.1. Without prejudice, that on facts and circumstances of the case, the CIT(A) erred on facts and in law in not condoning the delay in filing paper appeal considering that filing of electronic appeal was not possible in as much as no log-in details are/ were available for the company owing to - (i) dispute(s) within the management; (ii) seizure of books of accounts by the Company Law Board; and (iii) restrain on Directors to act on behalf of the appellant company.

Without prejudice:

2. That the CIT(A) erred on facts and circumstances of the case and in law in not setting aside the ex-parte order passed the assessing officer under sections 147/ 144 of the Act.

3. That on the facts and circumstances of the case and in law, the CIT(A) erred in not holding that the ex-parte reassessment order passed by the assessing officer was beyond jurisdiction, illegal and bad in law in terms of section 147 to 151 of the Act and being passed in gross violation of principles of natural justice.

3.1 That the CIT(A) erred on facts and in law in not appreciating that the reassessment proceedings initiated without any tangible material, merely on basis of some ex-parte information from DDIT (Inv) Shimla without any

independent application of mind/ enquiry by the assessing officer, was illegal and bad in law.

4. *That on facts and circumstances of the case and in law, the CIT(A) erred in not deleting addition of Rs. 1,00,000 made by the assessing officer under section 68 of the Act on account of increase in share capital during the relevant year.*
 5. *That on facts and circumstances of the case and in law, the CIT(A) erred in not deleting ad-hoc addition of Rs.5,00,000 made by the assessing officer on account of alleged possible revenue leakage and for non-production of cash book/ bank statements.*
 6. *That on facts and circumstances of the case and in law, the CIT(A) erred in not deleting addition of Rs.5,76,03,924 made by the assessing officer under section 68 of the Act on account of increase in current liabilities during the relevant year.*
 7. *That on facts and circumstances of the case and in law, the CIT(A) erred in not deleting addition of Rs.30,00,000 made by the assessing officer under section 69C of the Act towards purchase of agricultural land allegedly non-disclosed in the balance sheet of the appellant company.*
 8. *That on facts and circumstances of the case and in law, the CIT(A) erred in not deleting interest levied/ computed by the assessing officer under section 234A, 234B and 23 4C of the Act.”*
3. Brief facts of the case shows that assessee is a company, whose case was reopened by issue of notice under section 147 of the income tax act noting that assessee company had purchased an agricultural land in Himachal Pradesh for ₹ 30 lakhs however the agreement to sale of the land was registered on 1/5/2006 for only ₹ 15 lakhs. Thus, balance sum was paid through an unaccounted income/cash. Thus, notice under section 148 was issued on 20/3/2014. Assessee did not file any original return of income and further did not file any return in response to notice under section 148. Subsequently, after a lot of correspondence on 15/05/2014 the assessee company submitted a letter dated 13/05/2014 along with the computation of total income and unaudited unsigned balance sheet of the company. Subsequently notices issued under section 142 of the income tax act were also not complied with. Show cause notice dated 13/2/2015 was also not complied. Therefore based on the information available with the assessing officer , he passed an assessment order determining the total income of the assessee at ₹ 6 1203924/-on 27/3/2015. He made several additions to the income of the assessee company including ₹ 1 lakh on account of share subscription, ₹ 5 lakhs on ad hoc basis for not furnishing the bank statement, Rs. 5603924/- the total current liability of the assessee company and Rs. 30 lakhs on account of investment in the land.
4. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned Commissioner of income tax appeals – six, New Delhi. However the learned CIT – A noted that assessee company has filed appeal

manually and in the paper form on 4/05/2018 via speed post. He noted that in terms of the amended rule 45 read with rule 12 (3) of the income tax rules, 1962 the appellant was required to furnish the appeal electronically either through digital signature or through electronic verification mode. Thus, he found that no proper appeal has been filed before him; he issued notice to the assessee company. The assessee on 31/7/2018 submitted that appeal filed by the assessee should be accepted by condoning the delay. The learned CIT – A dismissed the appeal of the assessee holding that he does not have any power to accept the manual appeal as assessee were required to file the appeal only in electronic form after 1/3/2016. Despite the assessee given an opportunity to explain the reasons as well as to file the electronic appeal and to make an application for condonation of delay, the assessee did not make any such effort but provided to give an explanation. Therefore the appeal of the assessee was found to be non-est and dismissed in limine.

5. The assessee aggrieved with the order of the learned assessing officer has preferred this appeal before us. The assessee explained that it has compelling reasons for filing paper appeal instead of electronic appeal. It was further stated that there is a pending dispute between the management groups and parties in the business of the appellant could not take off and therefore the appellant could not file its financial accounts for the relevant year or file income tax return. The company law board had directed seizure of the books of accounts of the appellant. In addition, the honourable Delhi High Court has restrained the directors to act on behalf of the appellant company. Subsequently on application, honourable Delhi High Court as per order dated 24/10/2017 permitted the applicant to approach the income tax demand before the tax authorities in pursuance to which the appeal was filed before the learned CIT appeal, which was dismissed for want of electronic filing. The appellant could not file the aforesaid appeal electronically since it was unable to regenerate login credentials or password for accessing its accounts on the income tax web portal. Therefore the assessee filed an appeal in paper format before the learned CIT appeal. The assessee also submitted that it has made adequate effort by writing to the income tax helpdesk and also to the assessing officer for allowing the web portal access to the assessee. Therefore it was prayed by the assessee that the order passed by the learned CIT – A on this technical ground may be set aside and he may be directed to consider the appeal and issues on merits.
6. The learned departmental representative vehemently supported the order of the learned CIT – A and submitted that after the appointed date i.e. 1/3/2016 there is an amendment in the law by which the electronic filing of the appeal before the

authorities is mandatory. He submitted that the CIT appeal does not have any such power. He further referred to the order of the honourable Delhi High Court dated 24/10 /2017, he further submitted that honourable High Court has not allowed the assessee any relaxation in any of the provisions of the income tax act and rules there under. Therefore , even as per the order of the honourable High Court, they have directed the assessee to approach the income tax authorities. Therefore, assessee is bound to file an appeal before the Commissioner of income tax in electronic format.

7. We have carefully considered the rival contentions and perused the order of the lower authorities. The assessee was required to file an appeal in electronic format before the Commissioner of income. Assessee did not do that. Therefore, the appeal was not in accordance with the income tax rules 1962. The assessee was given enough opportunity by the Commissioner of income tax appeals to file appeal in electronic format. Despite that, assessee did not file any appeal in electronic format but requested the CIT – A to consider the paper appeal. In fact, requesting and officer to do something, which he is not authorised to do, no fault can be found in rejecting such request. More precisely, when he has given a repeated opportunity to the assessee to file appeal in electronic format. The assessee also approached the honourable Delhi High Court in FAO 359/2011, wherein order dated 24 – 10 – 2017 was passed. According to that order in para number four it is noted that assessee company did not file returns. It did not appear before the assessing officer. It resisted all opportunities before the CIT appeal to file appeal in electronic format. Therefore, the appeal was dismissed for non prosecution. Even the application for restoration was also filed after two years. All these facts show that despite fighting all the court cases at various forums, the assessee did not find adequate time and method to file an appeal in electronic format. Assessee has given email dated 17 April 2018 received from the Efiling helpdesk which has given the assessee adequate guidance for filing the appeal. On 3 July 2019, the assessee wrote a letter to the income tax officer for restoration of login. What happened after 30 July 2019, whether assessee approached the income tax officer by attending his office and requesting him to grant the login or assessee approach the CPC or not is not known. Seriously, in this case the efforts of the assessee in pursuing this appeal are wanting. What are the efforts the assessee made after writing this letter to the assessing officer were not at all placed before us. Even otherwise looking to the series of correspondence placed before us, each time assessee approached the income tax authorities after a considerable lag of time. This itself shows that assessee is not serious in pursuing this appeal. In view of this, we do not find any infirmity in the order of the learned CIT – A to the extent in not acceding request of

the assessee to consider appeal filed in paper format. Even otherwise, he is not authorised to do so. Therefore, appeal is dismissed. However, in the interest of justice, looking at the various litigations through which assessee is going, we give liberty to the assessee to file a fresh appeal before Id CIT (A) in electronic format in accordance with the rule along with the necessary application for condonation of delay, justifying the cause in delay in filing of the appeal. If such appeal is filed by the assessee, the learned CIT – A may hear the appeal of the assessee after condoning the delay, if found in accordance with the law. Assessee is directed to file the appeal before the learned CIT – A within three months from the date of receipt of this order.

8. In the result, appeal filed by the assessee is partly allowed for statistical purposes to above extent.

Order pronounced in the open court on 20/05/2020.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 20/05/2020
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi