

आयकर अपीलीय अधिकरण "SMC-II" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC-II" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजूनाथ जी, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, VP AND SRI MANJUNATHA G, AM

आयकर अपील सं./ ITA No. 1862/Mum/2019

(निर्धारण वर्ष / Assessment Years 2010-11)

Hanuman Dhanpatrai Dhanania Shop No. 4, Rajgor Chambers, 99, Surat Street, Dana Bunder, Mumbai-400 009	बनाम/ Vs.	The Income Tax Officer Ward 19(3)(5), Mumbai
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AELPD0568H		

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Akhtar Hussain Ansari, DR

सुनवाई की तारीख / Date of hearing:	16.06.2020
घोषणा की तारीख / Date of pronouncement:	16.06.2020

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष /

PER MAHAVIR SINGH, VP:

This appeal filed by the assessee is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-56 [in short CIT(A)], Mumbai dated 10.05.2018 and it pertains to Assessment Year 2010-11.

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

"1. On the facts & circumstances the learned Commissioner of Income Tax has erred in not adjudicating the appeal solely on technical ground that the appellant filed appeal manually on 08-



Mar-2016 and e-filed the appeal on 08-May-2018 and sought condonation delay. An invalid form 35, which is the appeal under consideration here, cannot be validated by subsequent form 35. The technical defect cannot be condoned.

Your appellant humbly submits that in view of judgment No. I.T.A No. 7134/Mum/2017 dated 04-,May.2018 by the Honourable [TAT SMC Mumbai in the case of All India Federation of Tax Practitioners Vs ITO (E) -1(2) Aaykar Bhavan Churchgate Mumbai 400020 the learned CIT (Appeals) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the Appellate Commissioner.

(2) The learned income tax Officer has erred in issuing notice under section 148 'Much before recording the reasons for reopening of Assessment. The Assessing officer shall have to record the reasons for taking the action u/s 148 prior to issue of notice.

(3) The learned Commissioner of Income Tax by not adjudicating the appeal on technical ground erred on facts and in law in reopening the assessment of the appellant u/s 148 for assessing the income of the appellant."



3. The Brief facts of the case are that the assessee is an individual engaged in the business of trading of Pipe and Pipe fittings on a wholesale basis filed his return of income for Assessment Year 2010-11, on 16-10-2010 declaring total income of ₹ 2,38,200/-. Subsequently, the case has been reopened under section 147 of the IT Act, 1961 for the reasons recorded as per which income chargeable to tax had been accepted assessment on account of obtaining accommodation bills of bogus purchases from hawala dealers as per the list prepared by sales Tax Department, Government of Maharashtra. The case has been selected for scrutiny and the assessment has been completed under section 143(3) read with section 147 of the IT Act, 1961 on 19.02.2016 and determined total income of ₹12,56,365/- after making net profit addition of 25% on alleged bogus purchases amounting to ₹44,72,662/- and made addition of ₹11,18,165/-.

4. Aggrieved by the assessment order, the assessee has preferred the appeal before CIT(A) on 08.03.2016 and such an appeal has been filed in manual form. The learned CIT(A) has dismissed the appeal filed by the assessee in-lumine for not filing the appeal in electronic form as required under Rule 45 of the IT Rules, 1962 (hereinafter the 'Rules') which came into effect from 01.03.2016.

5. None appeared for the assessee. We have heard Id. DR, perused the materials available on record and gone through the orders of the authorities below. 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 have been brought to the notice of the assessee, it has filed appeal in electronic form on 08/05/2018. 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 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 to 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 condone 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 set aside the appeal 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, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 16.06.2020.

Sd/-

(मंजूनाथ जी/ MANJUNATHA G)

(खा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.06.2020

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

Sd/-

(हावीर सिंह /MAHAVIR SINGH)

(पाध्यक्ष / VICE PRESIDENT)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai