

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
(Through Video Conferencing)**

**BEFORE  
SHRI G.S. PANNU, HON'BLE VICE PRESIDENT  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 4800/Del/2017  
Asstt. Year 2013-14

Mahle Filters Systems India Ltd. 1, Sri Aurobindo Marg, New Delhi Delhi, Pin : 110 016 (Appellant)	Vs.	DCIT, Circle-16(1), C.R. Building, New Delhi. Delhi Pin 110 002. (Respondent)
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Assessee by:	Shri Neeraj Jain, Advocate Shri Karan Jain, CA
Department by :	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	20/08/2020
Date of pronouncement	25/08/2020

**ORDER**

**PER SUDHANSHU SRIVASTAVA, JM:**

This appeal has been preferred by the assessee against order dated 18.05.2017 passed by the Ld. Commissioner of Income-tax (Appeals) - 6, New Delhi [CIT(A)] for assessment year 2013-14.

2. The brief facts of the case are that the assessee had filed the appeal before the Ld. CIT (A) on 29.04.2016 manually. While dismissing the appeal *in limine*, it has been stated by the Ld. Commissioner of Income Tax (Appeals) in the impugned order that vide Notification no. 11 of 2016 (F No. 149/150/2015-TPL) issued on 1<sup>st</sup> March, 2016, any person who was required to file the return of income electronically was to furnish the appeal (Form No. 35) electronically only. The Ld. CIT (A) also stated that vide Circular No. 20 of 2016 dated 26.05.2016, the CBDT has extended the date for e-filing of appeals till 15.06.2016. The Ld. CIT (A) held that since the assessee had not filed the appeal electronically, the appeal was to be dismissed as being *infructuous*. Against this order passed by the Ld. CIT (A), the assessee has approached the Tribunal and has raised the following grounds of appeal:-

1. *“That the Commissioner of Income-tax (Appeals) [‘CIT(A)’] erred on facts and in law in dismissing appeal preferred by the appellant in limine on the ground that the appellant failed to substitute the said appeal with electronic filing in the prescribed form.*
2. *That the CIT (A) erred on facts and in law in dismissing the appeal in limine, without considering the grounds raised by the appellant on merits.*

3. *Without prejudice, that the CIT(A) erred on facts and in law in not providing an opportunity to the appellant to cure the defect before dismissing the appeal in limine. Without prejudice*

4. *That the Ld. assessing officer erred on facts and in law in computing the income of the appellant for Assessment Year 2013-14 at Rs.56,10,80,510 as against income of Rs.49,37,22,830 returned by the appellant.*

*4.1 That the impugned assessment order passed by the assessing officer is nullis-juris, void ab- initio and bad in law, since adequate opportunity of being heard has not been afforded to the assessee in violation of principles of natural justice.*

*Re: Disallowance under section 80IC of the Act*

5. *That the Ld. assessing officer erred on facts and in law in disallowing the deduction under section 80IC of the Act following the findings in the preceding assessment years that the appellant company (the erstwhile Purolator India Ltd.) amalgamated into erstwhile Mahle and in effect a facade was created so that the appellant could claim the benefit of section 80IC of the Act.*

6. *That the assessing officer erred on facts and in law in holding that though, from the wording of the order of Hon'ble Delhi High Court and scheme of arrangement for merger, it appears that Mahle Filter Systems (India) Ltd. got merged with Purolator India Ltd. but the facts are completely contradictory.*

6.1 *That the assessing officer erred on facts and in law in holding that for all effective purposes, Purolator India Ltd. got merged with Mahle Filter Systems (India) Ltd. and a facade was created so that the resultant company which is Mahle Filter Systems Ltd., i.e., the assessee company, can claim benefit of deduction under section 80-IC.*

- 6.2 *That the assessing officer erred on facts and in law in holding that it is extremely difficult to comprehend why Mahle Filter Systems GmbH, who invested heavily and has 50% of the shares of the assessee company will like to merge with the Indian company.*
- 6.3 *That the assessing officer erred on facts and in law in holding that it is a clear case of tax evasion as the assessee was fully aware that to avail the benefit of deduction under section 80-IC, Mahle Filter Systems (India) Pvt. Ltd. is required to be merged into Purolator India Ltd.*
- 6.4 *That the assessing officer erred on facts and in law in holding that the above transaction is a sham transaction and the purpose of following the circuitous route of first merging Mahle Filter Systems (India) Ltd. with Purolator India Ltd. and then changing the name of the company to Mahle Filter Systems (India) Ltd. was to get the benefit of deduction under section 80-IC. Assessee failed to furnish any commercial reason for the above.*
- 6.5 *That the Ld. assessing officer erred on facts in alleging that the manufacturing unit at Parwanoo was formed by reconstruction/ transfer of a unit by Purolator to the appellant without appreciating that the manufacturing unit has not been reconstructed/ transferred and only the name of appellant has been changed from Purolator to appellant's present name (M/s. Mahle Filter Systems (India) Ltd.).*
- 6.6 *That the Ld. assessing officer erred on facts and in law in not appreciating that the amalgamation was purely a business and a strategic decision in order to expand and to synergize its business operations and the Directorate of Industries, had acknowledged the merger of erstwhile Mahle into the appellant and consequent change of name of the appellant.*

6.7 That the Ld. assessing officer erred on facts and in law in holding that 'other income' being rent receipts, interest receipts, scrap sales, discount received, foreign exchange gain, etc. amounting to Rs.67,88,259 not being the profits derived from manufacturing activities as the Parwanoo unit, is to be excluded from profits eligible for deduction under section 80IC of the Act.

6.8 That the assessing officer erred on facts and in law and failed to appreciate that aforesaid other income has been derived from business of the undertaking at Parwanoo unit and was eligible for deduction under section 80IC of the Act.

6.9 That the assessing officer erred on facts and in law in alleging that the appellant has shifted the profits from the head office to the manufacturing unit at Parwanoo since the head office may have incurred expenses in selling the stock amounting to Rs.22,81,28,082.

*Re: Reimbursement of expenses disallowed under section 40(a) of the Act for non deduction of tax at source*

7. That the assessing officer erred on facts and in law in making disallowance of payments made to Mahle Filter System GmbH of Rs.39,81,852, towards reimbursement of cost of Global liability insurance cover obtained on behalf of the appellant, holding the same to be fee for technical services in terms of section 9(l)(vii) of the Act, on which the appellant allegedly failed to deduct tax at source.

7.1 That the assessing officer erred on facts and in law and failed to appreciate that the payment made by the appellant to Mahle Filter System GmbH was merely a reimbursement of expenses not having any element of income and hence, not liable to deduction of tax at source under section 195 of the Act.

7.2 *That the assessing officer erred on facts and in law in not appreciating that payment was not in the nature of fees for technical services and therefore, no tax was required to be deducted at source under section 195 of the Act from the above payments.*

*Re: Royalty payments*

8. *That the assessing officer erred on facts and in law in disallowing a sum of Rs. 1,18,43,476 out of the royalty paid to Mahle Filter Systeme GmbH and Mahle Filter Systems Japan as per the 'Technical Assistance Agreement' holding the same to be a capital expenditure incurred for acquisition of intangible asset.*

8.1 *That the assessing officer erred on facts and has failed to appreciate that the royalty was paid only for license to use technology and the same was an allowable deduction as revenue expenditure.*

*Re: Charge of interest*

9. *That the assessing officer erred on facts and in law in levying interest under section 234B of the Act.*

*The appellant craves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing."*

3.0 The Ld. Authorised Representative submitted that the reason for not filing the appeal electronically was due to the reason that the e-portal for filing of the appeal was not functioning properly at the point of time the appeal was due for filing. The Ld. AR submitted that the assessment order was served on 31.03.2016 and, therefore, the appeal against the said

order had to be filed within 30 days from the date of service and, thus, the limitation for filing the appeal before the Ld. First Appellate Authority was expiring on 30.04.2016. It was further submitted that due to the difficulty in filing the appeal electronically due to technical glitches, the assessee was left with no option but to file the appeal manually so as to not miss the dead-line viz. a viz. the limitation. The Ld. AR also submitted that vide Circular No. 20/2016 dated 26<sup>th</sup> May, 2016 the CBDT had given relaxation for filing the appeals electronically. He drew our attention to the said circular and submitted that in this circular it has been mentioned by the CBDT itself that the EVC functionality for verification of e-appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. It was submitted that, thus, even as per the said Circular of the CBDT, the assessee could not be held to be at fault for not filing the appeal in the electronic mode. Referring to Para 3 of the said notification, the Ld. AR pointed out that as per the notification, appeals filed electronically before 15.06.2016 were to be treated as appeals filed within time. It was also submitted that the assessee has filed the appeal electronically also on 10.05.2017 which was still pending before the Ld.

Commissioner of Income Tax (A).

4.0 Per contra, the Ld. Senior DR vehemently argued that the Ld. CIT (A) had no option but to dismiss the appeal because it was mandated by the Rules that appeals filed manually by any person who was required to file the return of income electronically could not be entertained. The Ld. Senior DR argued that the Ld. CIT (A) could not have overlooked the mandatory requirement of e-filing of appeals and, therefore, he was justified in dismissing the appeal.

5.0 We have heard the rival submissions and have also perused the CBDT notifications referred to above. It is seen that the newly introduced system of appeals before the Ld. First Appellate Authority was introduced from 1<sup>st</sup> March, 2016 vide Rule 45 of the Income Tax Rules, 1962. The appeal by the assessee before the Ld. CIT (A) had to be filed manually on 29.04.2016 by the assessee because, as per the assessee, e-portal for filing the appeals was not functioning properly. This contention of the assessee is supported by the Circular issued by the CBDT dated 26<sup>th</sup> May, 2016 (Circular No. 20/2016) wherein it has been stated that EVC functionality of verification of e-

appeals was made operational from 12.05.2016 for individuals and from 19.05.2016 for other persons. Thus, undisputedly, the e-filing portal was not functioning on the date of filing of appeal by the assessee before the Ld. CIT (A) manually i.e. 29.04.2016. In spite of this, Ld. CIT (A) chose to dismiss the appeal of the assessee for the sole reason that the appeal before him was not filed in the electronic form although even Circular No. 20/2016 of the CBDT fairly acknowledges that the functionality was operative only from 19.05.2016 in the assessee's case. In such circumstance, we fail to understand as to how the Ld. First Appellate Authority could have dismissed the assessee's appeal for no fault on the part of the assessee. We also note that the assessee's appeal filed electronically later on i.e. on 10.05.2017 is still pending before the Ld. CIT (A). In such a situation, we deem it fit to restore this appeal to the file of the Ld. CIT (A) and direct that this appeal be tagged along with the appeal filed electronically on 10.05.2017 and be considered as one appeal for passing a reasoned order on merits as per law after giving proper opportunity to the assessee to present its case.

6.0 In the final result the appeal of the assessee stands allowed for statistical purposes.

Order pronounced on 25<sup>th</sup> August, 2020.

sd/-

sd/-

**(G.S. PANNU)**  
**VICE PRESIDENT**

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

Dated: 25/08/2020

***Veena***

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi