

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' 'FRIDAY' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 1455/DEL/2018 (A.Y 2013-14) &

ITA No. 1454/DEL/2018 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Amarjeet Singh 23, Regal Building, Connaught Place, New Delhi AAGPS2209D (APPELLANT)	Vs	ACIT Circle-52(1) New Delhi (RESPONDENT)
---	----	--

Appellant by	Sh. V. Rajakumar, Adv
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	19.02.2021
Date of Pronouncement	19.02.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 01/01/2016 & 17/10/2017 passed by CIT(A)- 18, New Delhi for Assessment Year 2013-14 .

2. The grounds of appeal are as under:- **ITA No. 1455/DEL/2018**

On the facts and in the circumstances of the case and in law, the CIT (A) erred in:

1. *treating the paper appeal filed by the assessee as non-est and dismissing the same in limine;*
2. *not passing a speaking order on the points in issue ex-parte and in contravention of natural justice;*

3. *confirming the following actions of the Assessing Officer:*

a) *determining taxable income vide order u/s 143(3) of the Act at an income of Rs.99,97,760/- against the returned income in a sum of Rs.42,58,080/-;*

b) *making following addition to the returned income:*

i) *Rs.28,01,105/- on account of interest paid on account on the ground of non-existent nexus;*

ii) *Rs.29,38,576/- on account of interest paid to earn interest income.*

All the above actions being arbitrary, grossly misconceived, palpably erroneous and wholly unjust and so must be quashed with directions for relief.

ITA No. 1454/DEL/2018

On the facts and in the circumstances of the case and in law, the CIT (A) erred in:

1. *treating the appeal filed electronically on 27.07.2016 as non-est and in violation of mandatory requirement to file the appeal electronically within the extended period i.e. 15.06.2016 and dismissing the same in limine and in contravention of the norms of natural justice and fair play;*

2. *frustrating the procedure for relief provided under the Act arbitrarily and abruptly;*

3. *confirming the following actions of the Assessing Officer:*

a) *determining taxable income vide order u/s 143(3) of the Act at an income of Rs.99,97,760/- against the returned income in a sum of Rs.42,58,080/-;*

b) *making following addition to the returned income:*

i) *Rs.28,01,105/- on account of interest paid on account on the ground of non-existence nexus;*

ii) *Rs.29,38,576/- on account of interest paid to earn interest income.*

All the above actions being arbitrary, grossly misconceived, palpably erroneous and wholly unjust and so must be quashed with directions for relief.

3. The assessee is an individual and had filed his return of income for AY 2013-14 on 31/10/2013 at Rs. 42,58,080/- which has subsequently been revised on 08/08/2014 at Rs. 42,58,080/-. The reason for filing revised return was declaring long term capital loss at Rs. 39,61,036/- which had been omitted to be declared in original return of income. The case of the assessee was selected under scrutiny assessment vide issuance of notice under section 143(2) dated 03.09.2014. The income has been assessed at Rs. 99,97,760/- resulting in addition of Rs. 57,39,681/- by the Assessing Officer.

4. Being aggrieved by the assessment order, the assessee filed before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

4. The Ld. AR submitted that the CIT(A) has not decided the appeal on merit and dismissed the appeal in limine. Therefore, the matter may be restored back to the file of the CIT(A).

5. The Ld. DR relied upon the order of the CIT(A) and assessment order.

6. We have heard both the parties and perused all the relevant material available on record. There is a delay in filing the appeal which is 422 days in ITA No. 1455/Del/2018 challenging order dated 01.04.2016 of the CIT(A). At the time of hearing the Ld. AR explained that the CIT(A) passed ex-parte order dated 01.10.2016 which was received by the assessee on 04.11.2016. In the meanwhile the assessee filed e-appeal in terms of the new Rules on 27.07.2016 which is before the order passed by the CIT(A). As the e-appeal was pending, the assessee at that stage never filed appeal before the Tribunal. But since in e-appeal as well the order dated 17.10.2017, the CIT(A) passed ex-parte order, the assessee has challenged both the orders in separate appeal before us. The explanation for delay is genuine and hence, delay is condoned. From the perusal of the orders in AY 2013-14 for which the assessee has filed two appeals before us for separate orders of the CIT(A), it can be seen that the

CIT(A) has not at all taken cognizance on merit of the case and has simplicitor dismissed the appeal in limine on both occasions. Once by saying that the appeal is in physical form and not filed e-appeal form and secondly by saying that the appeal is in e-appeal form but is in violation of mandatory requirement to file the appeal electronically within the extended period. Thus, the CIT(A) has denied the opportunity of hearing of the case on merit to the assessee. Therefore, it will be appropriate to remand back the issue to the file of the CIT(A) to decide the issue on merit and pass appropriate order according to law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

7. In result, the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court in presence of both the parties on this 19th Day of February, 2021

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/03/2021
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

