

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 6498/Mum/2019  
(A.Y: 2009-10)

R.R Enterprises, 123 Ground Floor, Swami Samarth CHS Ltd., Sector 12, Kharghar, Navi Mumbai - 410210.	Vs.	ACIT 17(3) Aayakar Bhavan, MK Road, Mumbai
PAN/GIR No. : AAHFR6392M		
Appellant	..	Respondent

Appellant by :	Shri Ajay Singh, AR
Respondent by :	Shri Gurubinder Singh, DR

Date of Hearing	13.05.2021
Date of Pronouncement	24.05.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) -28 Mumbai, passed u/s. 143(3) r.w.s 147 and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

*I. Manually filed appeal held to be not maintainable:*

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- 1) *The id CIT(A) erred in dismissing the appeal of the Appellant as not maintainable on the ground that the said appeal was not filed in electronically form, without appreciating that on 31.03.2016 assessee had manually filed appeal before CIT(A) which was duly accepted and acknowledged, thereafter an order dt 30/1/2017 was also passed for filing revised ground on further hearings paper book, written submission, case laws were filed and matter was heard . Infact on receipt of show cause notice on 4/12/2018 the assessee immediately rectified the defect by filing a electronic appeal and same was intimated to the CIT(A),therefore the appeal was maintainable*
- 2) *The Id CIT(A) failed to appreciate that Rule 45 of the income Tax Rules which mandates compulsory e-filing of appeals before the CIT(A) w.e.f. 01.04.2016 is a procedural and technical requirement. It cannot defeat the statutory right of an assessee to file an appeal. An assessee who has filed the appeal in paper format should be permitted to make good the default and to file an appeal electronically rather than dismissing the appeal as not maintainable.*
- 3) *The Assessee craves leave to add, amend, alter or delete any or all the above grounds of appeal.*

2. The Brief facts of the case are that, the assessee is a partnership firm engaged in the business as builder and developer. The assessee has filed the return of income on 29.09.2009 for the A.Y 2009-10 with a total income of Rs. 20,58,310/-,the return of income was processed u/s 143(1) of the Act. The case was selected for scrutiny under the CASS and the assessment was completed u/s 143(3) of the Act with the total income of Rs. 35,99,260/-

on 12.12.2011. Subsequently, the A.O found that there are discrepancies in the assessment of income on account of working progress, unsold flats and in sale price and cost price as per the agreement. Therefore, the A.O. has reason to believe that the income has escapement assessment and notice u/s 148 of the Act was issued. In compliance, the Ld. AR of the assessee appeared from time to time and filed the details. Whereas, the A.O on perusal of the information filed found that there is no proper recognition of revenue in respect of the flats in construction and made addition of Rs.54,47,415/- and determined the total income of Rs.90,46,680/-and passed the order u/s 143(3) r.w.s 147 of the Act on 09.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the CIT(A) found that as per the CBDT notification issued effective from 1.03.2016 it is mandatory for the assessee to file the appeal electronically but the assessee has manually filed the appeal. The CIT(A) considered the written submissions and the explanations of the assessee and observed that the assessee has filed an appeal manually which is not compliance with the CBDT notification and further when the appellate proceedings

are pending the assessee firm has also filed the appeal electronically on 27.12.2018. Therefore, the CIT(A) has dismissed the assessee manual appeal . Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

3. At the time of hearing, the Ld.AR submitted that the CIT(A) has dismissed the appeal of the assessee as it was filed manually and is not maintainable. The Ld.AR explained the technical difficulties in filing the appeal electronically due to amendment which has come w.e.f 01.03.2016 as per the Rule 45 of the IT Rules. The Ld.AR emphasized for one more opportunity be provided to substantiate the case on merits and prayed for allowing the assessee appeal. Contra, the Ld. DR relied on the order of the CIT(A) .

4. We heard the rival submissions and perused the material on record. The only disputed issue as envisaged by the Ld. AR that the assessee has filed the appeal manually for the A.Y 2009-10 on 31.03.2016. Whereas, the assessee has to file the appeal electronically w.e.f. 01.03.2016 as per Rule 45 of IT Rules. Further, we find

that as per the amendment and procedure laid down under Rule 45 & 46 of the Income Tax Rules, 1962 w.e.f. 01.03.2016. The appeal in Form No.35 has to be filed electronically, whereas the assessee has filed the appeal in paper form. Further, the CIT(A) in his order observed that the assessee has filed the appeal electronically on 27.12.2018 in the course of hearing proceedings before the appellate authorities. The assessee has faced the technical difficulties earlier in filing the appeal electronically. The appellate authority has treated the appeal as not maintainable and dismissed.

We have considered the fact of technicalities in filing the appeal electronically and the amendment effective from 01.03.2016. Accordingly, to meet the ends of justice, we set aside the order of the CIT(A) and restore the disputed issue to the file of the CIT(A) to adjudicate afresh on merits along with the appeal filed electronically and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and comply with appeal filling rules for early disposal of appeal

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and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24.05.2021

Sd/-  
(S RIFAUH RAHMAN)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 24.05.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai