

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.597/Mum./2022

(Assessment Year : 2012-13)

Minal Industries Ltd.

Plot no.16(P), 17-28 & 29(P) SEEPZ
MIDC, Andheri (East), Mumbai 400 072
PAN - AABCM3102D

..... Appellant

v/s

Jt. Commissioner of Income Tax (OSD)
Circle-10(2)(2), Mumbai

.....Respondent

Assessee by : Shri Kiran Mehta
Revenue by : Shri Asif Karmali

Date of Hearing - 22/06/2022

Date of Order - 22/08/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 28/06/2018, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by learned Commissioner of Income Tax (Appeals)-17, Mumbai, for the assessment year 2012-13.

2. The present appeal before us is delayed by 46 months. Along with the present appeal, assessee has filed application seeking condonation of delay in filing the appeal, which is also supported by an affidavit sworn by the Managing Director of the assessee company. In the affidavit, the

deponent has submitted that being aggrieved by the assessment order, assessee filed appeal manually before the learned CIT(A). Subsequently, the assessee also filed on-line appeal before the learned CIT(A). The manual appeal filed by the assessee was dismissed by the learned CIT(A) vide impugned order dated 28/06/2018 on the basis that same is not maintainable under the revised guidelines for filing the electronic appeal. It is further submitted that the online appeal filed by the assessee is still pending before the learned CIT(A). However, in the meanwhile, the Assessing Officer levied penalty of Rs. 30,85,632, inter-alia, holding that no quantum appeal is pending. Therefore, as an abundant caution, assessee filed the present appeal against the impugned order dated 28/06/2018 after a delay of 46 months. In the affidavit, it is further submitted that assessee was under a bona fide belief that quantum appeal filed by it online was pending and hence no appeal was filed against the impugned order passed by the learned CIT(A) dismissing the manual appeal. In view of the above, the assessee has requested to condone the delay as the same is unintentional and due to circumstances beyond the control of the assessee. On the other hand, learned Departmental Representative (*'learned DR'*) did not raise any serious objection against the application seeking condonation of delay.

3. Having perused the application, which is also supported by an affidavit, we are of the considered view that there exist sufficient cause for not filing the present appeal within the limitation period and therefore we condone the delay in filing the appeal by the assessee.

4. As noted above, the learned CIT(A) vide impugned order dated 28/06/2018 dismissed the appeal filed by the assessee on technical basis, by observing as under:

"3. The said Rule and factum of not filing of this appeal in electronic mode was brought to the notice of the appellant, vide this office letter dated 16.10.2017, attention was drawn to the referred Notification No S.O.637(E) dated 01.03.2016, issued by the CBDT, New Delhi, amending Rule 45 of the Income-tax Rules, 1962: The notification mandates compulsory e-filing of appeals before the Appellate Commissioner with effect from March 01,2016, in respect of all persons who are required to furnish their return of income electronically. Further, the appellant was asked to explain as to why the aforesaid appeal filed by him manually should not be treated as invalid, ab initio as per Section 249(1) and his written response was asked to be submitted within 7 days for the receipt of this letter.

In response of the AR of appellant filed submissions on 28.06.2018 stating as under:

"With respect to your above show cause notice we have to submit as under:-

For A.Y: 2012-13. The Assessment order was received by us on 29.04.2016 as can be seen from the form 35 filed and acknowledged by your office on that day there was no extension one filing of appeal due to some technical glitches hence to avoid delay manual appeal was filed by us on 12.05.2016 and thereafter appeal was filed electronically on 25.05.2016 once the system permitted that was within the time permitted.

Thus the appeal was filed electronically and within the extended time of filing appeal.

Hence the appeal should not be dismissed manual and E appeal should be merged as one."

5. The matter has been considered. In its submission, the appellant has submitted that the appeal could not be e-filed due to technical problems but was subsequently e-filed within the transition period. As a matter of fact, no prejudice will be caused to the electronically filed appeal for the year under reference. The issues involved and condonation of delay will be considered at the time of appellate proceedings arising out of e-filed appeal. However, the manual appeal filed is not admissible as per provisions of Section 249(1) of the Act. Hence, this appeal is treated as not maintainable and invalid abinitio."

5. During the course of hearing, learned Authorised Representative reiterated the facts as mention in the affidavit supporting the application seeking condonation of delay. On the other hand, learned DR also did not dispute the fact that appeal manually filed by the assessee was dismissed by learned CIT(A) without going into the merits and the appeal electronically filed is still pending, which shall be considered by the learned CIT(A) in due course.

6. Having considered the submissions made by the learned Representative appearing for both the parties and in view of the fact that appeal electronically filed by the assessee is still pending before the learned CIT(A), we are of the considered view that the present appeal filed against the impugned order, dismissing appeal manually filed by the assessee, is infructuous, and therefore is dismissed. However, we cannot be oblivious of the fact that the Assessing Officer has levied penalty of Rs. 30,85,632 under section 271(1)(c) of the Act, therefore, we deem it appropriate to direct the learned CIT(A) to decided the appeal electronically filed by the assessee, as expeditiously as possible, according to the procedure prescribed. We order accordingly.

7. In the result, present appeal by the assessee is dismissed.

Order pronounced in the open court on 22/08/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 22/08/2022

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai