

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM, &
SHRI AMARJIT SINGH, AM**

आयकरअपीलसं./ I.T.A. No. 1346/Mum/2022
(निर्धारणवर्ष / Assessment Year: 2013-14)

National Health and Education Society P D Hinduja National Hospital and Medical Research Centre, VeerSavarkar Marg, Mumbai-400 016	<u>बनाम/</u> Vs.	DCIT (Exemp.)-(2)(1), 6 th floor, MTNL Building, Peddar Road, Mumbai-400 026
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAATN0093Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anil Sathe, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Chetan M. Kacha, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	08.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	08.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 30.03.2022, passed by National Faceless

Appeal Centre (NFAC), Delhi for the quantum of assessment passed u/s 143(3) for AY 2013-14.

2. Ld. First Appellate Authority has dismissed the assessee's appeal on the ground that appeal was filed by the assessee belatedly and therefore it is barred by limitation. He has observed that the assessment order u/s 143(3) of the Act was made on 08.03.2016 and the said order was duly served upon the assessee on 10.03.2016 which is also an admitted fact as per Appeal Form No.35. Therefore, the instant appeal was required to be presented on or before 09.04.2016, i.e. within 30 days from the date of receipt of the order by the assessee. However, the assessee presented the appeal only on 14.06.2016 after a delay of 65 days. Against the said delay, the assessee has not taken any ground for condonation of delay in presenting the appeal. It was also observed that the assessee has not made any prayer even after filing the appeal late for condonation of the said delay while making its submissions in course of the assessee proceedings. The assessee has not shown any sufficient cause which has prevented it from filing the instant appeal in time.

3. Before us, Ld. Counsel for the assessee submitted that assessee had filed the appeal in physical form before the due date of filing the appeal, which is evident from the following chronology:-

Date of Assessment Order	08.03.2016
Date of service of order	10.03.2016
Due date for filing of appeal	09.04.2016
Actual date for filing appeal physically	07.04.2016
Actual date for filing of appeal electronically	14.06.2016

4. He further submitted that the scheme of physical filing of appeal was replaced by electronic /online filing of appeals w.e.f. 01.03.2016 vide rule 45 of the Income Tax Rules. However, the taxpayers encountered various difficulties in e-filing of the appeals due to functionality not being fully operational and other technical issues. The CBDT taking due cognizance of these difficulties came out with circular no. 20/2016 dated 26.05.2016 wherein it has been stated:-

1..... It has come to the notice of the Central Board of Direct Taxes (hereinafter referred to as the Board) that in some cases the taxpayers who were required to e-file Form 35, were unable

to do so due to lack of knowledge about e-filing procedure and/or technical issues in e-filing. Also, the EVC functionality for verification of e-appeals was made operational from 12-5-2016 for individuals and from 19-5-2016 for other persons. Word limit for filing grounds of appeal and mapping of jurisdiction of Commissioners of Income Tax (Appeals) were also a cause of grievance in some cases.

2.....in order to mitigate any inconvenience caused to the taxpayers on account of the new requirement of mandatory e-filing appeals, it has been decided to extend the time limit for filing of such e-appeals. E-appeals which were due to be filed by 15-5-2016 can be filed up to 15-6-2016. All e-appeals filed within this extended period would be treated as appeals filed in time.

3. In view of the extended window for filing e-appeals, taxpayers who could not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15-6-2016. Such e-appeals would also be treated as appeals filed within time.

5. Thus, it is submitted that the appeal of assessee should be remanded back to the file of Ld. CIT (A) as there no opportunity was given to the assessee while deciding the appeal.

6. On the other hand, Ld. DR also does not have any objection if the matter is remanded back to the file of Ld. CIT(A) for deciding the matter afresh.

7. After considering the aforesaid undisputed fact that assessee has filed the appeal physically on 07.04.16 which was before the due date of filing the appeal, i.e., 09.04.2016. Admittedly, the scheme of physical filing of appeal was replaced by electronic /online w.e.f. 01.03.2016 vide rule 45 of the Income Tax Rules. Since there was some difficulty in e-filing, CBDT has taken due cognizance of such difficulty and extended the time limit as noted above, thus it cannot be held that there is any delay in filing the appeal in accordance with law. Accordingly, we hold that the appeal of the assessee filed before Ld. CIT (A) was not barred by limitation. Since assessee has been denied opportunity to represent the case on merits, therefore, the appeal of the assessee is remanded back to the file of Ld. CIT(A) to decide the issue afresh on merits after giving sufficient opportunity of hearing to the assessee.

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

Orders pronounced in the open court on 8th August, 2022.

Sd/-

(Amarjit Singh)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 08.08.2022

Sd/-

(Amit Shukla)

Judicial Member

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai