

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 4203 /DEL/2017
Asstt.Yr: 2013-14**

GautamChadha
L/H Mrs. RatnaChadha
505, Salcon Aurum,
4, JasolaDistt. Centre,
New Delhi-110025
PAN- AADPC5798A

Vs ACIT, Circle-28(1),
New Delhi.

APPELLANT

RESPONDENT

Appellant by

ShriAshwani Kumar, Ld. CA &
ShriPanchamSethi, Ld.CA

Respondent by

Shri Ravi Kant Choudhary Sr. DR

Date of hearing

31.08.2022

Date of pronouncement

31.08.2022

ORDER

PER N.K. CHOUDHRY, JM:

This appeal has been preferred by the Assessee against the order dated 21.05.2017, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-10, New Delhi (in short "learned Commissioner") under Section 250 of the income-tax Act, 1961 (in short 'the Act'), for the assessment year 2013-14.

2. Brief facts, relevant for adjudication of the instant appeal, are that in the instant case, an assessment order dated 4.3.2016 was passed u/s 143(3) of the Act by the Assessing officer, New Delhi, whereby the Assessing officer determined the total taxable income at Rs. 6,56,61,930/- as against the declared income of Rs. 6,36,61,370/.

3. Being aggrieved with the assessment order, the Assessee preferred the first appeal before the learned Commissioner in manual form on dated 1.4.2016 which was taken into consideration by the learned Commissioner.

4. The learned Commissioner while deciding the appeal observed that CBDT vide Notification No. SO 637(E) 11/2016, has made the filing of appeal before the CIT(A) mandatory through e-filing and manual filing of appeal has been dispensed with, therefore, during the course of the appellate proceedings vide order-sheet entry dated 18.5.2017 the Assessee was informed that paper appeal filed by it is not maintainable.

4.1 In reply the Assessee informed that e-appeal has already been filed on 21.4.2017. Meaning thereby, the Assessee has filed two appeals, one in manual form and other in electronic form against the same assessment order for the same assessment year.

4.2 Ultimately the learned Commissioner held that the Assessee was mandatorily required to file the appeal electronically in the first instance and then by extended date i.e. 15.6.2016. As per Circular No. 20, manual appeal filed is not admissible as per provisions of Section 249(1) of the Act and also in view of the fact that the Assessee has already e-filed his appeal for the same assessment year i.e. A.Y. 2013-14 against the Assessing Officer's order in his case. Consequently this paper appeal is treated as not maintainable and is dismissed in limine. Since the appellant has already filed an appeal electronically which is late, therefore, as per provisions of Rule, the request for condonation of delay in filing of appeal may be examined at an appropriate time. In the result, the manual appeal filed by the appellant is dismissed.

5. The Assessee being aggrieved with the impugned order has preferred the instant appeal and in support of its case submitted that the learned

CIT(A) before dismissing the appeal of the Assessee filed in physical form, ought to have allowed opportunity of being heard to the appellant to correct the error. Further, without prejudice to the rights and contention of the appellant it is undisputed fact that the appellant also filed the appeal in electronic form on the very day of hearing of appeal i.e. 21.4.2017. Therefore, the same would have been considered by the learned Commissioner while disposing of the appeal on 21.5.2017. In any case reasonable and sufficient opportunity of being heard ought to have been allowed to the appellant before disposing of the appeal.

6. On the contrary, the learned DR refuted the claim of the appellant and submitted that the learned Commissioner has rightly followed the Notification referred to above whereby the filing of the appeal before the learned Commissioner has been made mandatory through e-filing only and manual filing of the appeal has already been dispensed with. Therefore, no interference is warranted.

7. Heard the parties and perused the material available on record. We observe that in the instant case, the Assessee had filed appeal against the assessment order dated 4.3.2016 u/s. 143(3) of the Act on dated 1.4.2016 in physical form. The provisions for filing of appeal to the Id. Commissioner (Appeals) in electronic form came into operation in March, 2016 and on 06.04.2016, the Pr. DGIT(systems) laid down the procedure, data structure and standard of Electronic Verification Code etc. and it is a fact that the CBDT while considering the hardships/technical glitches/difficulties in filing the appeal electronically, vide circular No. 20/2016 dated 26.05.2016 extended the time for filing the appeal(s) to the Id. Commissioner(Appeals). As the Assessee had already filed the appeal before 06.04.2016 when the notification No. 5/2016 and circular No. 20/2016 (supra) came into operation, therefore, the probability cannot be ruled out that the Assessee may be on misconception and/or *bona fide* belief, continued with paper

appeal. However it is also a fact the Assessee also complied with requirement of CBDT circular by filling the appeal in electronic-form. Even otherwise, we do not find any material and reason to disbelieve the contention of the Assessee qua technical glitches in the website of the Revenue Department at the time of filing the appeal by the Assessee which resulted into issuance of notification by the Pr. DGIT, referred above, and the circular No. 20/2016 by the CBDT for extension of the limitation period for filing the appeal electronically to the Commissioners (appeals).

7.1 We observe that in the case of M/s. S.A. Laboratories Pvt. Ltd. vs. Dy. CIT (ITA No. 5805/Del/2016 for the A.Y. 2012-13 decided on 24.03.2021), the coordinate Bench of the Tribunal has taken the lenient view by considering the peculiar facts and circumstances qua technical glitches in filing of the appeal electronically in the website of Income-tax Department and directed the Id. Commissioner to admit the Assessee's appeal filed in a manual form for regular hearing and to pass an order thereafter in accordance with law.

7.2 Even in the instant case, non-filing of appeal electronically, prima facie, does not seem to be *mala fide* or intentional and no useful purpose has been served by not filing the appeal electronically. Further, no prejudice shall be caused to the Revenue Department if the appeal of the Assessee is allowed to be decided on merits.

7.3 Hence, considering the peculiar facts and circumstances, mentioned above, and respectfully following the decision of the Hon'ble Co-ordinate Bench referred above, in our considered view, the justice would be met by directing the Id. Commissioner to treat the appeal filed by the Assessee in physical form before the Id. Commissioner, as filed electronically and to decide the same on merits, suffice to say while affording reasonable opportunity of being heard to the Assessee. Hence, directed accordingly.

8. In the result, the appeal of the Assesse is allowed for statistical purposes.

Order pronounced in the open court on 31/08/2022.

Sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

MP