

आयकर अपीलीय अधिकरण
मुंबई पीठ "डी", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री गगन गोयल, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
आअसं.1091/मुं/ 2023 (नि.व.2013-14)
ITA NO. 1091/MUM/2023(A.Y. 2013-14)

M/s.DIAJEWEL,
303-B,113 Aman Chambers,
M Karve Road, Opera House,
Mumbai – 400 004.
PAN: AABFD-8623-K

..... अपीलार्थी /Appellant

बनाम Vs.

ITO,Ward 19(1)(4),
Matru Mandir,
Mumbai – 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Bhupendra Shah
प्रतिवादी द्वारा/Respondent by : Ms. Mahita Nair, Sr. AR
सुनवाई की तिथि/ Date of hearing : 28/06/2023
घोषणा की तिथि/ Date of pronouncement : 28/06/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 22/03/2023, for the Assessment Year 2013-14.

2. Shri Bhupendra Shah appearing on behalf of the assessee submitted at the outset that the appeal has been dismissed by CIT(A) on the ground of limitations. The Id. Authorized Representative of the assessee narrating the

sequence of events submitted that assessment order u/s. 143(3) of the Income Tax Act,1961 [in short 'the Act'] was passed on 30/03/2016. The assessee filed appeal against the said order in physical mode on 11/04/2016. In support of his submissions the assessee referred to Form No.35. bearing acknowledgement from the o/o CIT(A). He submitted that the year 2016 was the transition period when the Income Tax Department had moved from physical mode to electronic mode. E-filing of the appeals were made mandatory. However, on account of technical issues in the e-filing procedure, the assessee were facing lot of problems. The CBDT vide Circular No.20/2016 dated 26/05/2016 granted extension of time for e-filing of the appeals in Form -35 before the CIT(A). The said Circular specifically states that the e-appeals which were due to be filed by 15/05/2016 can be filed by 15/06/2016. The assessee e-filed the appeal on 11/06/2016. Thus, there was no delay in filing of the appeal. Since, the appeal was filed within the extended period of limitation there was no requirement of filing application seeking condonation of delay. The CIT(A) without taking note of CBDT Circular dismissed the appeal of assessee in-limine holding that the appeal is time barred and no application for condonation of delay has been filed. The Id. Authorized Representative of the assessee submitted that the assessee has been forced into litigation by the Department and had to bear extra cost for filing appeal before the Tribunal. The Id. Authorized Representative of the assessee prayed for levy of cost on the Department for forcing the assessee to come in appeal before the Tribunal.

3. Ms. Mahita Nair representing the Department submitted that there appears to be some confusion with regard to mode of filing appeal by the assessee in physical mode and thereafter, in electronic mode.

4. Both sides heard. The CIT(A) has dismissed the appeal of assessee in-limine on the ground of limitation, in the absence of any application seeking condonation of delay.

5. A perusal of document on record reveal that the assessee had filed an appeal in the physical mode within 30 days from the date of the assessment order. The assessment order was passed on 30/03/2016. The assessee filed appeal before the CIT(A) on 11/04/2016, though the assessee was required to file appeal in electronic mode. It is an undisputed fact that the year 2016 was the initial year when the Department had made it mandatory e-filing of appeal. There were teething problems in the initial year both at the end of Department, as well as assesseees. The CBDT vide Circular No.20/2016(supra) to mitigate the teething issues had extended the time limit for filing of the appeals before the CIT(A). The time limit for appeals which were due to be filed by 15/05/2016 was extended upto 15/06/2016. The assessee filed e-appeal within the extended time. Thus, there is no delay in filing of appeal by the assessee before the CIT(A).

6. We find that the impugned order has been passed by the CIT(A) without verifying the facts and probably was oblivious of CBDT Circular (supra). The impugned order is thus set-aside and appeal of assessee is restored to CIT(A) for fresh adjudication on merits after affording reasonable opportunity of hearing/making submissions to the assessee, in accordance with law.

7. In the result, appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 28th day of June, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28/06/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai