

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 2387/Mum/2023

(A.Y: 2013-14)

SanjayGurdasmalChawla, 1301, Lake Superior Phase No. 5, AS Marg Chandivali Farm Road, Powai- Mumbai-400076.	Vs.	ACIT – 21 2 nd Floor, Piramal Chamber, Lalbaug, Lower Parel, Mumbai-400013.
PAN/GIR No. : ABOPC7669L		
Appellant	..	Respondent

Appellant by :	Shri Manish Trivedi.CA.AR
Respondent by :	Shri Dr. Kishore Dhule.CIT DR

Date of Hearing	18.10.2023
Date of Pronouncement	20.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The original appeal for A.Y. 2013-2014 was finally heard on 26/12/2016 by Hon'ble CIT(Appeal)-33 and written submission as well as evidence on record considered.*

2. *The final order was pending due to remand report from learned Assessing officer was pending*

3. *There is no fault of the assessee for not filing the alleged appeal in electronic mode as the portal of the Income Tax was not functioning and there was no clear operating instructions issued by the Income Tax Department*

4. *Once the appeal is accepted by the CIT(Appeal)-33 in manual form and no further defect memo was issued or communicated to the assessee to file the alleged appeal in electronic mode, even the final hearing was taken place hence the question of any violation for not filing the appeal in electronic mode does not arises*

5. *The appellant also sought clarification on the status of the appeal through e- nivaran and the same was not replied which leads to principle of natural justice*

6CBDT issued a circular for the extension of time limit reg., extended the window for filing e-appeals which were due to be filed by 15.05.2016 to 15.06.2016 on 26.05.2016 vide F.No.279/Misc/M-54/2016/ITJ whereas the assessee already filed his alleged appeal on 03/05/2016 in physical form.

7. *The appeal was heard in person by Hon'ble CIT(Appeal)-33 and on final order was pending and the fact of the case is covered in earlier assessment year i.e. A.Y.2012-2013 in favour of the assessee*

8. *Dismissal of the present appeal will lead to grave injustice to the assessee, loss of time, mental agony and principle of natural justice.*

2. The assessee has filed the return of income for the A.Y 2013-14 on 31.07.2013 disclosing a total income

of Rs.66,19,680/-.Subsequently, the case was selected for scrutiny under the CASS in order to verify (i) Low income from House property in ITR as compared to Rental receipts in Form. No.26AS and (ii) Tax credit (and receipts) in ITR is less than tax credit in Form. No. 26AS and notice u/sec 143(2) of the Act was issued. The Assessing Officer (AO) on perusal of the financial statements, ITR and Form.No.26AS found that the assessee has received rental income and interest income which were not offered for taxation. The assessee was directed to submit the details and to reconcile the receipts in Form.No.26AS with the income offered in ITR. In compliance, the assessee has filed submissions referred at page 2 of the assessment order. Whereas the AO found that the assessee has not disclosed the rental income in the ITR but as per 26AS the rental income was received. Finally the AO has dealt on the submissions, provisions and the judicial decisions and made addition of rental income and assessed the total income of Rs.1,10,23,060/- and passed the order u/sec 143(3) of the Act dated 23.03.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas, the CIT(A) has considered the grounds of appeal, statement of facts and found that the assessee has filed the appeal manually on 03.05.2016 against the order U/sec143(3) of the Act dated 23.03.2016. The CIT(A) has considered the facts that the assessee has filed the appeal manually and has not explained the reasons and the CIT(A) has observed that as per the amendment and substitution of Rule 45 w.e.f 1.03.2016, the appeal has to be filed electronically and without going into the merits of the appeal. The CIT(A) has dismissed the assessee appeal treating as non est. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR of the assessee submitted that the CIT(A) has dismissed the assessee's appeal, as the assessee has not filed appeal as per the procedure laid down under Rule 45 & 46 of Income Tax Rules, 1962. The assessee has filed the appeal manually on 3.05.2016 and whereas the CBDT circular No.20/2016 dated 26-05-2016 has extended

the e filling of appeal up to 15-06-2016. The Ld. AR contentions are that the amendment in filling the appeal electronically is w.e.f 1-3-2016 and due to technical issues it was extended. Whereas, the appeal was filed manually within the time limit and the assessee was facing the technical issues in filling the appeal electronically. The Ld.AR prayed that the assessee be provided an opportunity to substantiate the reasonable cause and relied on the judicial decisions and CBDT circular. Per contra, the Ld.DR supported the order of the CIT(A).

5. We have heard the rival submissions and perused the material available on record. The sole crux of the disputed issue that the assessee has filed the appeal manually on 23.03.2016. We find 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 not e- filed the appeal due to technical issues. We have considered the facts of technicalities in filing the appeal electronically and the amendment effective from 01.03.2016 and the CBDT circular extending

time limit for e-filing of appeal up to 15-06-2016. On the identical issue, the Honble Tribunal in the case of *Ashraf Aziz Kasmani vs ITO [2018] 92 taxmann.com 293 (Mumbai-Trib.)* has dealt on the facts, provisions of law and CBDT circular and granted the relief observing at Para 4 to 12 of the order read as under:

4. *“Thereafter, the Id. Commissioner of Income Tax (Appeals) considered the admissibility of appeal filed in manual form on 30.6.2016. In this regard, he referred to be CBDT Notification No. SO 637(E) [No. 11/2016 dated 01.03.2016] and has referred as under:*

“In exercise of the powers conferred by sub-section (1) of section 249, read with section 295 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the following rules further to amend the Income-tax Rules, 1962, namely

1. (1) These rules may be called the Income-tax (3rd Amendment) Rules, 2016.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (herein after referred to as the said rules), for rule 45, the following rule shall be substituted, namely:-

45. Form of appeal to Commissioner (Appeals).-

(1) An appeal to the Commissioner (Appeals) shall be made in Form No. 35.

(2) Form No. 35 shall be furnished in the following manner, namely:-

(a) in the case of a person who is required to furnish return of income electronically under sub-rule(3) of rule 12,-

(i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;

(ii) by furnishing the form electronically through electronic verification code in a case not covered under sub-clause (1); (b) in a case where the assessee has the option to furnish the return of income in paper form, by furnishing the form electronically in accordance with clause (a) of sub rule(2) or in paper form.

(3) The form of appeal referred to in sub-rule (1), shall be verified by the person who is authorized to verify the return of income under section 140 of the Act, as applicable to the assesses, (4) Any document accompanying Form No. 35 shall be furnished in the manner in which the said form is furnished. (5) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall-

(1) specify the procedure for electronic filing of Form No. 35 and documents;

(i) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(2), for the purpose of verification of the person furnishing the said form, and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval of policies in relation to the said form so furnished."

5. Thereafter, be referred to the amendment to Rule 2(3) of the Income Tax Act, 1962 where the mode of filing of the return income in electronically form is specified. Thereafter, the ld. Commissioner of Income Tax (Appeals) referred to another CBDT

Circular whereby the CBDT has subsequently extended the period of filing of appeal electronically till 15.06.2016, the said CBDT Circular No. 20 dated 26.5.2016 reads as under:

"Rule 45 of the Income Tax Rules, 1962 mandates compulsory e-filing of appeals before ld. Commissioner of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically. 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 12.05.2016 for individuals and from 19.05.2016 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. The matter has been examined by the Board. While the underlying issues relating to e-filing of appeals have since been addressed and resolved, 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 15.05.2016 can be filed upto 15.06.2016. 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 and required to file an e-appeal in accordance with Rule 45 before the extended period i.e. 15.06.2016. Such e-appeals would also be treated as appeals filed within time."

6. From the above, the Id. Commissioner of Income Tax (Appeals) noted that the assessee was required to file this appeal only in electronic form latest by 15.06.2016. However, since the appeal was filed manually as a paper appeal, the Id. Commissioner of Income Tax (Appeals) held that since the same was not electronically filed, he treated the appeal is not maintainable.

7. Against the above order, the assessee is in appeal before the ITAT.

8. I have heard the Id. Departmental Representative. None appeared on behalf of the assessee. The notice for hearing has also returned unserved. Hence, I proceeded to adjudicate the case by hearing the Id. Departmental Representative and perusing the records. From the grounds of appeal in this case, it transpires that the assessee has raised a ground that the CBDT Circular which mandated appeals before the Id. Commissioner of Income Tax (Appeals) to be filed electronically was dated 01.3.2016 and, hence, it is the plea of the assessee that the appeals against the assessment order passed on or before 01.03.2016 can be filed manually and all the appeals in respect of assessment order passed on or after 01.3.2016 to be filed electronically. 9. First of all I note that the Id. Commissioner of Income Tax (Appeals) has himself noted in the first paragraph of his order that the appeal is "well within time". Thereafter, the Id. Commissioner of Income Tax (Appeals) has opined that the assessee should have filed the appeal electronically by referring the CBDT Circular.

10. I find that there is no clarification in the said CBDT Circular, regarding the applicability of the same with regard to the date of assessment order passed. In the present case, admittedly the assessment order has been passed before 01.03.2016, so the claim of the assessee

that the said Circular is applicable to assessment orders passed after 01.03.2016, cannot be brushed aside summarily. When this question was put to the ld. Departmental Representative, she replied that since the assessment order has been served to the assessee after 01.03.2016, the assessee's ground taken cannot be sustained.

11. Upon careful consideration, I find that in the above CBDT Circular, admittedly there is no discussion about the date of assessment order, with respect to which the said Circular is applicable. A construction that the said Circular is not applicable to assessment orders passed prior to 01.3.2016, cannot be said to be totally unsustainable. The Hon'ble Apex Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 has expounded that if two constructions are possible, one in favour of the assessee should be applied. On the facts of the present case, and on the touch stone of the above said Hon'ble Apex Court decision, I am of the considered opinion that the assessee's plea that the appeal filed manually for assessment order passed prior to 01.03.2016, should be admitted by the ld. Commissioner of Income Tax (Appeals), is cogent. More so, when the ld. Commissioner of Income Tax (Appeals) in his earlier paragraph has accepted that the appeal is well within time. Accordingly I direct the ld. Commissioner of Income Tax (Appeals) to admit the aforesaid appeal of the assessee and pass an order on the merits of the case. Needless to add, the assessee should be granted adequate opportunity of being heard.

12. In the result, the appeal by the assessee stands allowed for statistical purpose.”

6. We find the facts in the present case, are similar and identical as discussed in the above judicial

decision and the amendment and procedure laid down under Rule 45 & 46 of the Income Tax Rules, 1962 mandated compulsory e-filing of appeal before the CIT(A) w.e.f. 01.03.2016 and further as per the CBDT circular no.20/2016 dated 26-05-2016 considering the technical issues/lack of knowledge of e-filing procedures has extended the e filling of appeal up to 15-06-2016. Hence to meet the ends of justice, we set aside the order of the CIT(A) and restore the disputed issues to the file of the CIT(A) to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and comply with appeal filling rules. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 20.10.2023.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 20.10.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai