

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3949/Mum/2023
(A.Y. 2013-14)**

HBS Realtors Pvt. Ltd. 505 Ceejay House, Dr. Annie Besant Road, Worli Mumbai – 400018	Vs.	Dy. Commissioner of Income Tax- 7(1)(2) Aaykar Bhavan Mumbai – 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACC1641C		
Appellant	..	Respondent

Appellant by :	Mandar Vaidya
Respondent by :	P.D. Chougule

Date of Hearing	16.04.2024
Date of Pronouncement	18.04.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC for A.Y. 2013-14. The assessee has raised the following grounds before us:

- “1. The Ld. CIT(A) erred in treating the Appellant's appeal as 'delayed solely because the appeal, in the first instance, was filed manually and not electronically.*
- 2. The Ld. CIT(A) misdirected himself in not appreciating that failure to file the appeal electronically, in the first instance is, at best, a procedural defect and the difference between 'manual' and 'electronic' is, merely of form.*
- 3. The Ld. CIT(A) was not, in the given circumstances, justified in declining to condone the delay in filing the appeal*
- 4. The Ld. CIT(A) fell in error in not appreciating that plurality of objects was not precluded in the purposes contemplated u/s.11(2) of the Act.*

5. *The Ld. CIT(A) was not justified in not adjudicating the appeal on merits even though, subsequently, the defect was removed viz. appeal was filed electronically.*

The appellant craves leave to add, alter, amend, modify any grounds of appeal.”

2. The fact is that the return of income declaring total income at Rs.4,36,04,770/- was filed on 25.09.2013. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 04.09.2014. The assessing officer has finalised the assessment u/s 143(3) of the Act on 21.03.2016 after making disallowance u/s 14A r.w.Rule 8D of the I.T. Rule to the amount of Rs.8,78,278/-.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has not adjudicated the appeal filed by the assessee on merit and the same was dismissed for the reason that there was delay in e-filing of appeal.

4. During the course of appellate proceedings before us the ld. Counsel vehemently contended that assessee had filed the original appeal on 07.04.2016 but the same was not filed online since the circular for filing the appeal had come very late.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessee has filed original appeal against the order of assessing officer before ld. CIT(A) on 07.04.2016 by physical mode as prescribed in the pre-amended Rule 45 of the Income Tax Rule 1962. The Rule 45 of the Income Tax Rule was amended by the Income Tax (Third Amendment Rule 2016 w.e.f 1.03.20126). Subsequently, the CBDT vide Circular No. 20/2016 (F. No.279/Misc/M-54/2016/ITJ) dated 26.05.2016 has extended the time limit for filing E-appeal to 15.06.2016 keeping in view the inconvenience caused to the taxpayer. The assessee has brought to

the notice of the ld. CIT(A) at column no. 15 of the form no. 35 regarding condonation of delay in filing the online appeal on the ground that circular regarding e-filing of appeal had come late and the assessee had already filed the original appeal on 07.04.2016. We consider that the delay was happened because of new system of e-filing of appeal which was newly introduced and the assessee came to know about the system only after filing the original return of income on 07.04.2016. We find that CBDT in the above referred Circular No. 20/2016 dated 26.05.2016 has acknowledged the inconvenience caused due to new requirement of mandatory e-filing appeals. We consider that first appellate authority was not justified in dismissing the appeal merely for the reason that e-appeal was filed late without considering the circumstances that assessee had already filed the original appeal on 07.04.2016 before the issuing of the circular dated 26.05.2016. This fact is also acknowledged in the above referred circular that new requirement of e-filing appeals is prone to initial hardship experienced by the assessee. We have also considered the decision of Hon'ble Supreme Court in the case of Collector Land Acquisition Vs. Mst. Katigir (1987) taxman.com 1072 wherein held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to scuttle a decision on merit. It is evident from the above facts and submission of the assessee that there was a bonafide reason for delay in filing the e-appeal which was originally filed on 07.04.2016. After considering the facts and circumstances and findings as discussed supra in this order we condone the delay in refiling the e-appeal by 730 says which was already filed by physical mode on 07.04.2016 and direct the ld. CIT(A) to decide the issue in appeal on merit as contemplate u/s 250(6) of the Act after affording opportunity of hearing to the assessee. Accordingly, the appeal of the assessee is allowed for statistical purpose.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 18.04.2024

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 18.04.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.