

IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.4117/Mum./2023

(Assessment Year : 2011-12)

Hindva Estate Pvt. Ltd.
2101/02, 2102-2, Raheja Empress,
Mumbai City, 400025.
PAN – AABCH8112L

..... Appellant

v/s

Income Tax Officer-5(1)(4)
Aaykar Bhavan, M. K. Road,
Mumbai-400020.

..... Respondent

Assessee by : Shri V. P. Kothari
Revenue by : Shri P. D. Chougule

Date of Hearing –18/04/2024

Date of Order – 03/05/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 21/09/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:

"(a) The learned CIT(Appeals) has erred in law and on facts by not considering the facts of the case only on the basis of the delay in E-filing of appeal without considering the circular No. 20/2016 dated 26.05.2016 which states that where the appeals have been filed in the physical form from 01.03.2016 within the stipulated time then it may be E-filled any time upto 15.06.2016 which will be considered that the

appeal has been filed on time. The assessee has filled the physical appeal on 12.04.2016 against the order dated 28.03.2016 which is well within the stipulated time of 30 days.

(b) The learned CIT (Appeals) has erred in law and on facts by not confirming the facts on the additions made by the learned Income Tax Officer of Rs. 2,85,00,000/- u/s 68 of the Income Tax Act 1961 treating unsecured loan taken as unexplained cash credit without properly considering the submissions made by the appellant for proving the credit worthiness as well as the identity of the lenders."

3. The only grievance of the assessee is against the dismissal of its appeal by the learned CIT(A) on the ground of delay.

4. During the hearing, at the outset, the learned Authorised Representative ("*learned AR*") submitted that the assessment order under section 143(3) of the Act was passed by the Assessing Officer on 28/03/2016, assessing the total income of the assessee at Rs.2.85 crore. Being aggrieved, the assessee initially physically filed the appeal before the learned CIT(A) on 12/04/2016. Subsequently, the said appeal was uploaded as per the new e-filing procedure on 10/06/2016. The learned AR submitted that the physical appeal was filed by the assessee within the limitation period before the learned CIT(A) and the same was only uploaded on 10/06/2016, i.e. within the extended time granted by the CBDT vide Circular No.20 of 2016, dated 26/05/2016. Therefore, the learned AR submitted that there is no delay in filing the appeal before the learned CIT(A).

5. On the other hand, the learned Departmental Representative vehemently relied upon the impugned order.

6. Having considered the submissions of both parties and perused the material available on record, we find that the assessment order dated 28/03/2016, passed under section 143(3) r/w section 147 of the Act was received by the assessee on 28/03/2016. Therefore, as per the provisions of section 249(2) of the Act, the assessee was required to file the appeal within a period of 30 days from the date of receipt of the assessment order. We find from the copy of the acknowledgement of filing of physical appeal before the

learned CIT(A) that the assessee filed the said appeal on 12/04/2016 i.e., within 30 days from the date of receipt of the assessment order. However, we find that the assessee e-filed the same appeal before the learned CIT(A) on 10/06/2016 in view of the newly substituted provisions of Rule 45 of the Income Tax Rules, 1962, w.e.f. 01/03/2016 by IT (Third Amendment) Rules, 2016, and within the extended time granted vide Circular No.20 of 2016 issued by the CBDT on 26/05/2016. Accordingly, the assessee claimed that there was no delay in filing the appeal, and therefore no application seeking condonation of delay was filed before the learned CIT(A).

7. From the perusal of the impugned order, we find that the learned CIT(A) without deciding the appeal filed by the assessee on merits dismissed the same only on the basis that sufficient cause has not been shown by the assessee for condonation of delay in filing the appeal. It is the plea of the assessee that no reply from the assessee was sought by the learned CIT(A) on this aspect. In the present case, it cannot be disputed that it is the case where the appeal before the learned CIT(A) was filed during the transition period of filing appeals from physical mode to e-filing mode, and therefore all assesseees cannot be presumed to be well-versed with the e-filing procedure. However, in the present case from the perusal of the record, it is evident that the assessee was diligent and interested in pursuing the litigation and therefore filed the appeal, though physically, before the learned CIT(A) within the limitation period and subsequently, also uploaded the said appeal on 10/06/2016, as per the new e-filing procedure which was introduced w.e.f. 01/03/2016 and within the extended time granted by the CBDT till 15/06/2016. From the perusal of Circular No.20 of 2016 issued by the CBDT on 26/05/2016, we find that the CBDT specifically directed that e-appeals filed till the extended period, i.e. 15/06/2016 be treated as appeals filed within time in cases where taxpayers have originally filed paper appeals. Therefore, in view of the facts and circumstances of the present case, we are of the considered view that the appeal e-filed by the assessee before the learned CIT(A) on 10/06/2016 is within the limitation period as extended by the CBDT vide aforesaid Circular and thus the learned CIT(A) was not justified in dismissing the assessee's

appeal on the ground of delay. Since the learned CIT(A) has not rendered any finding on the merits of the issues raised by the assessee, therefore, we deem it appropriate to restore the appeal to the file of learned CIT(A) for the decision on merits after hearing the parties. Accordingly, the impugned order is set aside and the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 03/05/2024

Sd/-
AMARJIT SINGH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 03/05/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai