

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.426/M/2018
Assessment Year: 2010-11**

M/s. Asterix Reinforced Ltd., (Formerly known as Bombay Highpolymer Chemical Products Ltd. and Orson Petrochemical Pvt. Ltd.), 8, Premson Shopping Centre, Tahira Compound, Caves Road Joeshwari East, Mumbai - 400 060 PAN: AAAC09377P	Vs.	Income Tax Officer 10(3)(2), Room No.621, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400 020
(Appellant) (Respondent)		

Present for:

Assessee by : Shri. R.D. Kundalia, A.R.
Revenue by : Mrs. N. Hemalatha, D.R.

Date of Hearing : 03.05.2018
Date of Pronouncement : 16.05.2018

ORDER

Per G. Manjunatha, Accountant Member:

This appeal filed by the assessee is directed against the order of the Ld. CIT(A)-17, Mumbai dated 31.10.17 and it pertains to assessment year 2010-11. The assessee has raised the following grounds of appeal:

“• The Appellant had filed first Appeal before CIT(A) manually within time limit. Subsequently CBDT issued Circular to file appeal electronically. The Appellant was not aware of such circular and hence they did not filed Appeal electronically. The Appellant came to know about such circular when they received notice from CIT(A). The Appellant requested for Condonation for

non-filing of appeal electronically. However the same was rejected on technical reasons. The Appellant prays that appeal filed manually is considered and allow to proceed hearing.

- The Learned Assessing Officer has erred in facts by adding Rs. 15,00,000/- u/s. 68 on account of Unexplained Cash Credit and as such it may be deleted.
- The appellant craves leave to add, to modify or alter any or all the above grounds of appeal.”

2. The brief facts of the case are that the assessee company has filed its return of income for assessment year 2010-11 on 21.09.10 declaring total income at Rs.23,53,105/-. The case has been selected for scrutiny and the assessment has been completed under section 143(3) on 30.03.16 determining the total income of Rs.38,53,105/- by making additions towards unexplained share application money under section 68 of the Income Tax Act, 1961.

3. Aggrieved by the assessment order the assessee preferred appeal before the Ld. CIT(A). The assessee has filed its appeal manually in form No.35 on 29.04.16. The Ld. CIT(A) dismissed the appeal filed by the assessee by holding that the appeal filed by the assessee is not maintainable as the Central Board of Direct Taxes has issued a notification vide Notification No.SO 637(E) [No.11/2016 (F. No.149/150/2015-TPL)] dated 01.03.16 wherein it was mandatory on the assesseees to file all appeals before the first appellate authority electronically under digital signature. The Ld. CIT(A) further observed that in this connection the Principal DGIT Systems vide Notification No.5/16 dated 06.04.16 has laid down the procedure, data structure and standard electronic verification code etc. to facilitate filing of appeal electronically. However,

considering the hardships/technical glitches in filing the appeal electronically the CBDT extended the period for filing the appeal electronically till 15.06.16. Since the assessee has filed the appeal in form No.35 manually, the Ld. CIT(A) has dismissed the appeal filed by the assessee as not maintainable and void ab initio. The relevant order of Ld. CIT(A) is extracted below:

“5. The matter has been considered. The two facts are not disputed. Firstly, that it has become compulsory for those who are required to furnish their return of income electronically, to also file their appeals electronically before a Commissioner of Income Tax (Appeals) on or after March 01.2016. This is demonstrated by the explicit language of the governing Notification dated March 01 .2016, to the effect that an appeal to the Commissioner (Appeals) shall be made electronically in Form No.35 under a digital signature/electronic verification code. Secondly, the appeal under consideration has been filed manually after the aforementioned cut-off date, and that it does not fall in excluded category.

5.2 Furthermore, the requirement of electronic filing of Return of Income has to be referred as on 01.03.2016. In other words, irrespective of assesment year involved, it is to be seen that on 01.03.2016 whether the appellant was required to file Return of Income electronically or not Under the circumstances, the appellant was mandatorily required to file the appeal, electronically in the first instance, and then by the extended date i.e. 15.06.2016 as per the Circular No. 20 which is not complied with. The manual appeal filed is not admissible as per provisions of Section 249(1) of the Act. Consequently, this appeal is treated as not maintainable and invalid abinitio. Accordingly, there would be no cause to examine any other aspect of the appeal, including other statutory procedures, deficiency in documents or the merits of the case, etc.”

4. The Ld. A.R. for the assessee submitted that the Ld. CIT(A) was erred in dismissing the appeal filed by the assessee on technical grounds without discussing issues on merit even though filing up appeal in electronic mode as made mandatory by the CBDT by issuing notification. The assessee was not aware of such circular and hence they did not file appeal electronically. But the facts remain that the assessee

has filed its appeal in time by filing form No.35 manually, therefore, the Ld. CIT(A) was erred in dismissing the appeal on technical grounds without discussing the issues on merits, therefore, requested to set aside the issue to the file of Ld. CIT(A) with a direction to admit the appeal filed by the assessee and decide issues on merits.

5. On the other hand the Ld. D.R. submitted that as per the provisions of the Act, filing of appeal categorically is made mandatory by the CBDT by issuing circular. As per rules the assessee is required to file the appeal electronically after certain date. The Ld. CIT(A) by following the provisions of law has rejected the appeal filed by the assessee as the assessee has failed to file the appeal electronically, therefore appeal of the assessee may be dismissed.

6. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the CBDT has mandated filing of appeal in electronic form after a certain date by issuing notification vide Notification No.SO 637(E) [No.11/2016 (F. No.149/150/2015-TPL)] dated 01.03.16 as per which the assessee is required to file form No.35 electronically. It is also an admitted fact that the CBDT has extended such due date of filing of appeal in electronic mode up to 15.06.16 considering the hardships/technical glitches in filing the appeal electronically. Admittedly, the assessee has filed its appeal in paper form on 29.04.16. The assessee claims that it is unaware of the notification issued by

the CBDT for filing appeals in electronic format, therefore, it has filed its appeal in manual form on 29.04.16. The assessee further claims that during transition period the provisions of notification should not be applied strictly.

7. Having heard both the sides, we find merits in the arguments of the assessee for the reason that during transition period the provisions of any notification or circulars mandating the assesseees to follow certain instructions should not be strictly applied. We further noticed that the assessee has filed its appeal in manual form and such appeal has been filed within the prescribed time under the Act. Therefore, we are of the considered view that merely because the assessee has not filed the appeal in electronic form, the assessee's appeal cannot be dismissed on technical grounds that too during transition period. We, further, noticed that the Hon'ble Supreme Court and various High Courts have already categorically stated that when technicalities and substantial justice is pitted against each other, the substantial justice deserves to be prevailed over technicalities. Therefore, we are of the considered view that the Ld. CIT(A) was erred in dismissing the appeal filed by the assessee as not maintainable, hence, we set aside the issue to the file of the Ld. CIT(A) and direct him to admit the appeal filed by the assessee by directing the assessee to file its appeal in electronic format and also to condone delay in filing such appeal in electronic format. We also direct the Ld. CIT(A) to decide the issues on merits.

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

Order pronounced in the open court on 16.05.2018.

**Sd/-
(Joginder Singh)
JUDICIAL MEMBER**

**Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER**

Mumbai, Dated: 16.05.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.