

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.2507/Del/2018
Assessment Year: 2009-10

M/s. Intelenet Global Services Pvt. Ltd. (Prior to merger known as Technovate e-Solutions Pvt. Ltd.), Intelenet Towers, Plot CST No.1406, A-28, Mindspace, Madad (W), Mumbai	Vs.	DCIT, Circle-25(1), New Delhi
PAN :AACCT4147K		
(Appellant)		(Respondent)

Appellant by	Sh. Yishu Goel, AR Sh. Ankit Sahay, Adv.
Respondent by	Sh. Sunita Singh, CIT(DR)

Date of hearing	28.09.2021
Date of pronouncement	21.10.2021

ORDER

PER O.P. KANT, AM:

This appeal has been preferred by the assessee against the order dated 29/01/2018 passed by the learned Commissioner of Income-tax (Appeals)-9, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2009-10 raising following grounds:

1 : 0 Re.: Dismissing the appeal filed in limine:

- 1 : 1 *The Commissioner of Income-tax (Appeals) has erred in dismissing the appeal in limine, since the Appellant has failed to file the appeal electronically within the prescribed period.*
- 1 : 2 *The Appellant submits that considering the facts and circumstances of the case the Commissioner of Income-tax (Appeals), ought not to have dismissed the appeal, since the physical copy of the appeal was filed within the prescribed time limit.*

Without prejudice to the aforesaid:

2 : 0 Re.: Order passed u/s. 271(1)(c) of the Income-tax Act, 1961:

- 2 : 1 *The Assessing Officer has erred in passing the Order dated 31 March 2016 u/s. 271(1)(c) of the Income-tax Act, 1961.*
- 2 : 2 *The Appellant submits that Assessing Officer failed to appreciate that the penalty order was beyond jurisdiction and / or otherwise not in accordance with the provisions of the Act and was hence bad in law and of no legal effect.*
- 2 : 3 *The Appellant submits that the impugned Order passed u/s. 271(1)(c) of the Income- tax Act, 1961 be held as null and void and be struck down.*

3 : 0 General:

- 3 : 1 *The appellant reserves the right to add, alter or amend to the above grounds of appeal.*

2. We find that appeal filed by the assessee before the Ld. CIT(A) was dismissed *in limine* as the said appeal was filed manually before the Ld. CIT(A), i.e, first appellate authority, whereas the assessee was required to filed appeal electronically by 15/06/2016 as per the notification issued in this regard. In view of the appeal dismissed in limine, the adjournment sought before us by the learned counsel of the assessee for filing paper-book was rejected.

3. We find from para 4.7 of the impugned order that the Ld. CIT(A) has held that defect in appeal would be removed by way of filing appeal electronically as per the applicable provisions. The Ld. CIT(A) has further noted in Para 4.6 of the impugned order that assessee has filed the appeal in electronic form on 28/02/2017 before learned Commissioner of Income-tax (Appeals)-20, Mumbai, but no copy of transfer of jurisdiction to Mumbai u/s 127 of the Income-tax Act, 1961 (in short 'the Act') was made available to him. In para 4.8 the Ld. CIT(A) has mentioned that said appeal filed before the learned CIT(A)-20, Mumbai would be considered by the competent authority for disposal as per CBDT Guidelines. Before us, no information has been provided by the learned counsel of the assessee regarding the status of the appeal filed electronically on 28/02/2017 before the Ld. CIT(A)-20, Mumbai.

3.1 The right of the assessee for appeal is a substantial right, which should not be taken away for technical breach of not filing appeal in the electronic form. If the assessee chooses to pursue his appeal, he should be allowed to file appeal in electronic form as per the Rules. The assessee has filed appeal in manual form instead of electronic form, may be due to unawareness on the part of professional handling filing of the appeal or any other reason. In view of the above facts and circumstances, we restore the matter back to the Ld. CIT(A) with the direction that:

- (i) if the electronic appeal filed by the assessee dated 28/02/2017 has been considered for adjudication or

already adjudicated, then this appeal of the assessee filed manually, may be treated as infructuous .

- (ii) If said appeal dated 28/02/2017 has not been acted upon by the Department and has been dismissed or rejected due to lack of jurisdiction, then we direct the assessee to file appeal in electronic form as per Income Tax Rules, 1962 framed in this regard along with request for condonation of delay, which shall be considered in accordance with law and appeal shall be decided on merit. This appeal filed manually shall be treated as infructuous.
- (iii) If any appeal in electronic form in compliance to para 4.7 of the impugned order of the learned CIT(A) has already been filed, then same may be considered in accordance with law and this appeal filed manually be treated as infructuous.

4. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21st October, 2021

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

Dated: 21st October, 2021.

RK/- (DTC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi