INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'A' BENCH, MUMBAI

[Coram: Pramod Kumar, Vice President, and,
Pavan Kumar Gadale, Judicial Member]

ITA No.: 3761/Mum/19
Assessment years: 2014-15

Asmi Buildcon Private Ltd. …………………….. **Appellant**
Shop No.5, Asmi Dreamz,
Junction of M.G. Road, & S.V. Road,
M.G. Road, Goregaon (West),
Mumbai-400062
[PAN: AAJCA3684N]

Vs.

ITO-12(1)(2), …………………**Respondent**
Mumbai 400020.

Appearances:
Nitin Furia *for the appellant*
Sunil Deshpande *for the respondent*

Date of concluding the hearing: : November 17th, 2020
Date of pronouncement : December 1st , 2020

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee appellant has challenged correctness of learned CIT(A)'s ex-parte order dated 13.03.2019 in the matter of assessment under section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2014-15.

2. The grievances raised by the appellant in ground no. 1 & 2 are as follows:

> **1. Invalid Dismissal of Appeal:**
>
> **a) Hon. CIT (A) vide order dated 13-03-2019 dismissed the Appeal No- CIT(A)-20/IT-10131/2016-17 instituted on 30-01-2016 on basis of non verification of Form-35 by the Managing Director or Director.**

b) According to Rule 45 of Income Tax rules, 1962, Form 35 should be verified by the person who is authorized to verify return u/s Section 140 of Income Tax Act, 1961.

c) Form-35 instituted on 30-04-2016 was duly signed by Ajay Malshi Dedhia who is the Director of M/S Asmi Buildcon Pvt. Ltd., authorized to sign as provided in Rule-45 read with Section 140 of Income Tax Act, 1961.

d) The system permitted to write the name of the appellant in the verification and hence the name of the appellant only was written in the place of name of appellant.

e) Your appellant strongly objects such action and prays that the order of Hon. CIT(A) be quashed.

2. Violation of Natural Justice:

a) No opportunity was provided by the Hon. CIT(A) to the appellant in gross violation of the principles of equity and natural justice.

b) Your appellant strongly objects such action and prays that the order of Hon. CIT(A) be quashed as result of gross violation of the provisions of natural justice.

3. To adjudicate on this appeal, it is sufficient to take note of the facts that the learned CIT(A) summarily dismissed the appeal before him ex-parte, and while being so observed as follows:

> **"2. On the going through the Form No.35, it is seen that in the Form of Verification has been verified and "digitally signed" by M/s. Asmi Buildcon Private Limited (the appellant). As per Rule 45 of Income Tax Rules, 1962, the Form No.35 was required to be verified by the person who is authorized to verify the return of income under section 140 of t e Act. Rule 45 is reproduced below:**
>
>> **45. (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 (i);**

> **(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 authorised to verify the return of income under section 140 of the Act, as applicable to the assessee.**
>
> **(4) Any document accompanying Farm 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-**
>
> > **(i) specify the procedure for electronic filing of Form No.35 and documents;**
> >
> > **ii) 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 a security, archival and retrieval of policies in relation to the said form so furnished.]**

3. As per Section 140 of the Act, in case of a company, the return of income is to be verified by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director thereof. The relevant portion section 140 is reproduced below:

> **140. The return under section 115WD or section 139 shall be verified-**
>
> **……**
>
> **(c) in the case of a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to verify the return, or where there is no managing director, by any director thereof:**
>
> **Provided that where the company is not resident in India, the return may be verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return :**
>
> **Provided further that,-**
>
> > **(a) where the company is being wound up, whether under the orders of a court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be verified by the liquidator referred to in sub-section (1) of section 178;**
> >
> > **(b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be verified by the principal officer thereof; or**

> **(c) where in respect of a company, applicable for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.**
>
> **Explanation. - For the purposes of this clause the expressions "insolvency professional" and "Adjudicating Authority" shall hove the respective meanings assigned to them in clause (18) of section 3 and clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)……..**

4. In the instant case, the Form No.3s has been verified neither by the Managing Director nor any other Director. Therefore, the appeal is not valid. Accordingly, the appeal is treated as dismissed."

4. Aggrieved, assessee is in appeal before us.

5. Having heard the rival contentions and having perused the material on record, we are unable to sustain the stand of the learned CIT(A). As learned counsel rightly contends it was not open to the learned CIT(A) to dismiss the appeal ex-parte, without furnishing any opportunity of hearing to the assessee, on a hyper-technical ground. The assessee had no opportunity whatsoever to explain it's stand or to rectify the alleged mistake. Such a course of action is clearly violative or the principles of natural justice. We, therefore, deem it fit and proper to vacate the impugned ex-parte order, and remit the matter to the file of the CIT(A) for fresh adjudication in accordance with the law after furnishing a reasonable opportunity of hearing to the assessee. Ordered, accordingly.

6. As the ground nos. 1 & 2 are allowed in the terms indicated above, all other issues raised in appeal are rendered academic and infructuous. These issues do not call for any adjudication at this stage.

7. In the result, appeal is allowed for statistical purposes in the terms indicated above. Pronounced in the open court today on the 1st day of December , 2020

Sd/-	Sd/-
Pavan Kumar Gadale	**Pramod Kumar**
(Judicial Member)	(Vice President)

Mumbai, dated the 1st day of December , 2020

Copies to:	*(1)*	*The Applicant*	*(2)*	*The respondent*
	(3)	*CIT*	*(4)*	*CIT(A)*
	(5)	*DR*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai