

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

**BEFORE SHRI B. R. BASKARAN, AM &
SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 7134/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2013-14)

All India Federation of Tax Practitioners, 215, Rewa Chambers, 31, New Marine Lines, Mumbai-400020	बनाम/ Vs.	ITO (E)-1(2) AayakarBhavan, Churchgate, Mumbai-400020.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAATA1331L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Dr. K. Shivaram& Shri SashankDundu, AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Ms. N. Hemlatha, DR

सुनवाईकीतारीख/ Date of Hearing	:	05.04.2018
घोषणाकीतारीख / Date of Pronouncement	:	04/05/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Mumbai, dated 15.09.17 for A.Y. 2013-14.

2. As per the facts of the present case, the assessee is a trust registered with DIT€, Mumbai u/s 12A and with Charity Commissioner, Mumbai. The assessee filed its return of income on 29.09.11 alongwith the income and expenditure account, balance sheet and audit report in form 10B declaring total income at Rs. 1,81,777/-. Thereafter, assessment for AY 2013-14 was completed by order u/s 143(3) of the I.T. Act on 17.02.16 at taxable income of Rs. 14,22,664/-.

Aggrieved by the order of AO, the assessee preferred appeal before Ld. CIT(A) and the Ld. CIT(A) noticed that rule 45 of I.T. Rules 1962 mandating compulsory e-filing of appeals before CIT(A) with effect from 1st March 2016, therefore Ld. CIT(A) dismissed the appeal in limini by holding that mandatory requirement of e-filing of appeal have

not been fulfilled by the assessee. Therefore the appeal filed manually was not treated as valid appeal and hence the same was dismissed.

Aggrieved by the order of Ld. CIT(A), the assessee has preferred the present appeal before us.

3. Now before us Ld. AR has challenged the order of Ld. CIT(A) in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically.

4. Ld. AR reiterated the same arguments as were raised before Ld. CIT(A) and submitted even though the appeal was filed in paper form and under the relevant provisions of I.T. Act 1961, but the Ld. CIT(A) has erred in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically. Ld. AR further submitted that Ld. CIT(A) ought to have taken into account that the alleged compliance defaults were of a technical nature and being introduced for the first time in the statute books,

ought to have considered legally and heard the appeal on merits. It was further submitted that Ld. CIT(A) has erred in denying an opportunity of appeal to deserving appellant and thus resulted in denial of opportunity of Justice in the deserving case.

5. On the other hand Ld. DR appearing on behalf of the Department supported the orders passed by the revenue authorities.

6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of I.T. Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1st March 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e I.T. Act, 1961.

As per the facts of the present case, the assessment in the above case was completed u/s 143(3) of the I.T. Act 1961. However the assessee has filed appeal before Ld. CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of '**State of Punjab Vs. Shyamalal Murari and others reported in AIR 1976 (SC) 1177**' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial' system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgement reported as AIR 2005 (SC) 3304 in the case of '**RaniKusumVrs. Kanchan Devi,**' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgement of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that **if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be**

overshadowed or negated by such technical considerations.

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Del/16 in case titled **Gurinder Singh Dhillon Vrs. ITO** had restored the matter to the file of Ld. CIT(a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner.

Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are

followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Ld. CIT(A) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we **allow** the appeal filed by the assessee.

7. In the net result the appeal filed by the assessee is **allowed**.

Order pronounced in the open court on 4th May, 2018.

<i>Sd/-</i> (B. R. Baskaran) लेखासदस्य / Accountant Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (Sandeep Gosain) न्यायिकसदस्य / Judicial Member 04.05.2018
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai