



Lyka Labs Limited

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. Nos.03/Mum/2018 & 7436 To 7438/Mum/2017
(निर्धारणवर्ष / Assessment Years: 2002-03, 2004-05, 2010-11 & 2011-12)

Lyka Labs Limited 101, Shiv Shakti Industrial Estate Andheri Kurla Road Andheri(East) Mumbai-400 059	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle 10(2)(1) Mumbai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.AAACL-0820-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenueby	:	Rajesh Kumar Yadav, Ld.DR
Assessee by	:	Shefali Garg, Ld.AR

सुनवाईकीतारीख/ Date of Hearing	:	04/07/2018
घोषणाकीतारीख / Date of Pronouncement	:	11/07/2018

आदेश / O R D E R

Per Bench

1. The common grievance of the assessee in all the above appeals is that the Ld. first appellate authority has dismissed the assessee's appeal on technical ground since the appeal was filed manually, which as per the extant rule, was required to be *e-filed* in the prescribed manner. The date of all the four impugned orders is 31/10/2017 which has been passed by same appellate authority and



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the appellate orders are similarly worded. As evident from the impugned order for AY 2002-03, the appeal has been dismissed by first appellate authority by making following observations:-

5. The matter has been considered. *The appellants appeal has been filed in the manual form on 22.04.2016 and therefore, the above 'quoted reply' filed by the appellant has no relevance to the instant appeal.*

5.1 *Moreover, 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 assessment 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 ab inito. 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.*

6. *As a result, the manual appeal filed by the appellant for A.Y.2002-03 is treated as dismissed, u/s. 250 r.w.s.251 of the Act.*

2. Aggrieved, the assessee is in further appeal before us. The Ld. Authorized Representative for Assessee [AR], Ms. Shefali Garg, has pleaded for restoration of appeals by placing reliance on the recent decision of this Tribunal rendered in *All India Federation of Tax Petitioners Vs. ITO* [ITA No. 7134/Mum/2017 dated 04/05/2018]. The Ld. Departmental Representative [DR], Shri Rajesh Kumar Yadav, has controverted the same by placing reliance on the extant rules and the



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order of first appellate authority. We have heard the same and gone through material available in record including the cited decision of this Tribunal.

3. The details of assessment, which were the subject matter of appeal before Ld. first appellate authority may be tabulated as under:-

No.	AY	Date of Assessment Order	Section under which framed	Date of Manual Appeal filed before Ld. CIT(A)
1.	2002-03	27/03/2016	143(3) r.w.s. 254	22/04/2016
2.	2004-05	31/03/2016	143(3) r.w.s. 147 r.w.s. 254	22/04/2016
3.	2010-11	30/03/2016	271(1)(c)	22/04/2016
4.	2011-12	30/03/2016	271(1)(c)	22/04/2016

Prima facie, all the manual appeals have been filed before Ld. first appellate authority within the prescribed time limit. As evident from above discussion, the appeal has been dismissed on technical grounds since the same were required to be *e-filed* with Ld. first appellate authority with effect from 01/03/2016 in terms of CBDT Notification No. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL)], dated 1-3-2016.

5. Upon due consideration, we find that the stated issue has already been dealt with by the co-ordinate bench of this Tribunal in the cited order. For the sake of convenience, the same is reproduced below:-

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



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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. Shyamal 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 '**Rani Kusum Vrs. 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 judgment 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



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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.

The revenue is unable to place on record any contrary judgment in this regard. Therefore, following the binding judicial precedent, taking the same view, the assessee is directed to *e-file* the aforesaid appeals within a period of 10 days from the date of receipt of this order, consequent to which delay in *e-filing* shall stand condoned. Thereafter, Ld. CIT(A) is directed to consider the appeals on merits as agitated by the assessee.

6. Resultantly, the all appeals stand allowed in terms of our above order.

Order pronounced in the open court on 11th July, 2018

Sd/-
(C.N.Prasad)
न्यायिकसदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 11.07.2018

Sr.PS:-Thirumalesh



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आदेश की प्रतिलिपि अग्रेषित /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. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

**उपसहायकपंजीकार/ (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई / ITAT, Mumbai**