

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**AHMEDABAD – BENCH ‘D’**  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 402/Ahd/2017**

**निर्धारण वर्ष/Assessment Year: 2013-14**

Shree Akdant Steel Associates 607, Akruti Comple Nr.Stadium Circle Navrangpura Ahmedabad 380009.	Vs	ITO, Ward-5(2)(4) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Jinesh Shah, AR
Revenue by :	Shri R.P. Maurya, Sr.DR

सुनवाई की तारीख/Date of Hearing : 17/07/2018

घोषणा की तारीख /Date of Pronouncement : 17/07/2018

**ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER :** Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-5, Ahmedabad dated 8.12.2016 passed for the assessment year 2013-14.

2. It is pertinent to observe that assessee is a partnership firm. It has filed its return of income 30.9.2013 declaring total income at Rs.13,69,080/-. The Id.AO has passed an assessment order on 24.2.2016 under section 143(3) of the Income Tax Act. Sub-section (2) of section 249 authorise an assessee to file an appeal within 30 days from service of the assessment order/demand notice. The assessee has filed its appeal before the Id.CIT(A) on 22.3.2016 which is within 30 days from the date of assessment order. The Id.CIT(A) has dismissed the appeal of the assessee without adjudicating the issue on merit on the ground that

CBDT has amended rule 45 of Income Tax Rules 1962 vide which the assessee was required to file the appeal from the assessment order electronically. The assessee failed to transmit its appeal in electronic form within statutory period. Rather it has filed on 10.11.2016.

3. On due consideration of the above facts, we are of the view that the Id.CIT(A) has not justified in dismissing the appeal of the assessee on such technical issue without adjudicating it on merit. The right to file has been provided in statute under section 249 which can only be taken away by legislative amendment and not in a delegated manner. The Id.CIT(A) should have decided the appeal on merit. It has filed appeal within due date. It is also important to note that when the assessment order was passed and right to file appeal was available with the assessee. At that point of time, CBDT circular not came into existence. The Id.CIT(A) ought to have looked into that aspects also. The assessment order was passed on 24.2.2016 whereas the CBDT circular came into existence on 1.3.2016. If the assessee has filed appeal on 25.2.2016 itself, then how the Id.Commissioner could level allegations against the assessee about non-maintainability of its appeal. In view of the above discussion, the appeal of the assessee is allowed. Issues are set aside to the Id.CIT(A) who will decide the appeal on merit.

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

**Pronounced in the Open Court on 17<sup>th</sup> July, 2018.**

**Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated, 17/07/2018