

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C", MUMBAI**

**BEFORE SHRI B.R. BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3493/MUM/2018  
Assessment Year: 2013-14**

M/s. Color Copi Limited Kamla Towers, 256-B, Opp. Tide Water Company Limited, Kanchwadi, Gowandi (East), Mumbai-400 088  PAN: AADCC 6104 B	<b>Vs.</b>	Dy. CIT, Central Circle – 2(3), Room No. 803, 8 <sup>th</sup> Floor, Old CGO Annexe Building, M. K. Rosad, Marine Lines, Mumbai-400 020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Mrs. Renu Kapoor (AR)  
Revenue by : Shri Rajat Mittal (DR)

Date of Hearing: 18/07/2018  
Date of Pronouncement: 30/07/2018

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 13.03.2018 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-48, Mumbai, for the assessment year 2013-14, whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee manually filed appeal against the assessment order passed by the Assessing Officer u/s. 143(3) of the Act pertaining to the assessment year 2013-14. The ld. CIT(A) dismissed the appeal filed by the assessee holding that the same was required to be e-filed in accordance with the procedure laid down in Rule 45 & 46 of the Income Tax

Rules, 1963. Aggrieved by the said order, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Id. CIT(A) on the following grounds:

1. *“The Ld. CIT (A) has erred in law and on the facts of the case in dismissing the appeal as invalid ab-initio appeal.*

4. At the outset, the Id. Counsel of the assessee submitted that the ITAT, Mumbai vide order dated 04.05.2018 has decided the identical issue in favour of the assessee in *All India Federation of Tax Practitioners vs. ITO* (in ITA No. 7134/Mum/2017) by setting aside the impugned order in an identical matter. In view of the said order, the impugned order passed by the Id. CIT(A) may be set aside.

5. On the other hand, the Id. Departmental Representative relying on the findings of the Id. CIT(A) submitted that since the assessee has failed file an appeal in accordance with the provision of Rule 45 & 46 of the I. T. Rules, the Ld. CIT(A) has rightly dismissed the appeal.

6. We have heard the rival submissions and also perused the material on record. The co-ordinate bench has decided the identical issue in favour of the assessee in the case of *All India Federation of Tax Practitioners* (supra), holding as under:

*“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 1<sup>st</sup> 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 judgment 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 negatived 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 instant case, the ld. Counsel of the assessee submitted that the appeal was filed manually within 30 days from the date of receipt of the assessment order. Since, the co-ordinate bench has dealt with the identical issue and decided the same in favour of the assessee in the case of *All India Federation of Tax Practitioners* (supra) and set aside the findings of the ld. CIT(A), we respectfully following the decision of the co-ordinate bench set aside

the impugned order passed by the ld. CIT(A). Since the assessee claims to have filed the appeals electronically, subject to verification, we condone the delay in filing appeals electronically and restore the issues to the file of the Ld CIT(A) for adjudicating the same on merits.

8. In the result, appeal filed by the assessee for assessment year 2013-2014 is allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup> July, 2018.

*Sd/-*

(B.R. BASKARAN)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 30/07/2018

Alindra, PS

*Sd/-*

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेशप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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

**आदेशानुसार/ BY ORDER,**

सत्यापितप्रति //True Copy//

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