

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
3043/Mum/18	2008-09	Bhargavi Dhiren Patel, 38, Wadia Building, 9-B, 1 <sup>st</sup> Floor, Cawasji Patel Street, Fort MUMBAI [PAN: AAKPP5294M]	Income Tax Officer- 16(2)(2), MUMBAI
3044/Mum/18	2009-10		
3045/Mum/18	2009-10	Dhiren Mohanlal Patel, 40, Wadia Building, 9-B, 1 <sup>st</sup> Floor, Cawasji Patel Street, Fort MUMBAI [PAN: AAHPP6691H]	Income Tax Officer- 16(2)(3), MUMBAI
3046/Mum/18	2008-09		

Appellant By : Shri Mandar Vaidya,  
Respondent By : Shri Vijay Kumar Soni, DR

Date of Hearing : 29-01-2019	Date of Pronouncement : 01-02-2019
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**ORDER**

These are four appeals by two different assesseees and these are directed against four separate orders of the Ld. Commissioner of Income Tax (Appeals)-5, Mumbai, all dated 28-03-2018. Since the facts and issues involved in all these appeals are common and identical, all these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. Since the grounds raised by the assesseees in all these appeals are identical, for the sake of convenience, grounds raised in ITA No. 3043/Mum/2018 (AY.2008-09) are reproduced herein below:

*“1. The Ld. Commissioner of Income Tax (Appeals) erred in dismissing the Appellant’s appeal solely on the ground that the appeal, in the first instance, was filed manually and not electronically.*

*2. The Ld. CIT (A) was not justified in ignoring the subsequent electronic filing on 3<sup>rd</sup> August 2017.*

*3. The Ld. CIT(A) misdirected himself in not appreciating that failure to file the appeal online (viz. electronically) in the first instance is, at best, a procedural defect and the difference between ‘manual’ and ‘electronic’ is merely of form.*

*4. The Ld. Commissioner of Income Tax (Appeals) was not justified in not adjudicating the appeal on merits even though, subsequently, the defect was removed viz. appeal was filed electronically.*

*5. The appellant craves leave to add, alter, amend, modify any grounds of appeal.”*

3. At the outset, it was submitted by the Ld. AR of the assessee that at per Para No. 3.5 of the order of Ld. CIT (A) in all these four cases, it is noticed by the Ld. CIT (A) that the assessee was required to file the appeal in electronic form latest by 15-06-2016 but the assessee has filed the appeals manually as paper appeal and the same does not meet the requirements laid down by the relevant notification of the rule. It was further submitted that the same rule and factum of

filing these appeals in paper mode was brought to the notice of the assessee and in response thereafter, the assessee had filed all these appeals in e form on 03-08-2017. It was further submitted that in spite of noting this that the assessee has filed on-line appeal on 03-08-2017, the Ld. CIT (A) has dismissed these appeals as not maintainable. Thereafter, he submitted that a copy of Tribunal's order in the case of Kiran Gulab Bhatia Vs. ITO in ITA Nos. 6400 to 6403/Mum/2017 dt. 04-01-2018 and pointed out that in these cases also, appeal was filed by the assessee in paper form and not in electronic mode and the Tribunal has directed the Ld. CIT(A) to adjudicate the appeal of the assessee on merits. He submitted a copy of the said order of the Tribunal and drawn my attention to Para No. 3.1 of the said order. Learned DR of the revenue supported the order of CIT (A).

4. I have considered the rival submissions. The facts are not in dispute that the assessee was required to file the appeal in electronic form latest by 15-06-2016 but earlier, the assessee filed appeals in paper form and later, on 03-08-2017, the assessee filed the appeals on-line. In spite of this, Ld. CIT(A) dismissed these appeals of assessee *in limine* by holding

that these appeals filed by the assessee are not admissible as per Section 249(1) of the Income Tax Act, 1961 (Act). As per the Tribunal's order rendered in the case of Kiran Gulab Bhatia Vs. ITO (supra) also, the appeal was dismissed by the Ld. CIT(A) merely on technical ground because the appeals were filed in manual form instead of e-form prescribed by the CBDT. Under these facts, the Tribunal restored the matter back to the file of CIT (A) to decide the appeals of assessee on merits. In this connection, I reproduce Para Nos. 3 & 3.1 of this Tribunal's order, cited supra, for ready reference:

*"3. So far as, the ground raised, on merit is concerned, it was explained that the impugned orders were passed by the First Appellate Authority and dismissed the appeal merely on technical grounds as were filed on manual form instead of 'e form' prescribed by CBDT without appreciating that the assessee due to some difficulties could not be able to e-file the appeal memos, without providing opportunity of being heard to the assessee. The Ld. DR contended that the assessee was expected to e-file on prescribed form.*

*3.1. I have considered the rival submissions and perused the material available on record. Without going into much deliberation, I am of the view that merely on technical grounds, the appeals should not have been dismissed and the assessee should have been heard on merit. The assessee is a proprietor of Hemkiran Electronics. Additions u/s 68 of the Income Tax Act, 1961 (hereinafter the Act) were made while passing the order u/s 143(3) r.w.s. 147 of the Act. Admittedly, the assessee was expected to file the appeals electronically as per Circular No.20 automatically does not lead to the conclusion that if due to technical reasons, the same is filed manually, it will be treated not maintainable. If the Ld. Commissioner of Income Tax (Appeal) was not satisfied with manual filing, nothing prevented him to hear the practical difficulties of the assessee and then to adjudicate the same. The appeals were filed on manual form*

on 13/02/2017. Even otherwise, as per Article-265 of the Constitution of India only due are to be levied/collected, therefore, without going into much deliberation, the Ld. Commissioner of Income Tax (Appeal) is directed to adjudicated the appeals of the assessee on merit afresh. The assessee be given opportunity of being heard with further liberty to furnish evidence, if any, to substantiate his claim. Thus, all the appeals are allowed for statistical purposes.

Finally, the appeals of the assessee are allowed for statistical purposes”.

4.1. Since in the present case, the facts are similar, I feel it fit and proper to follow this order of Tribunal and set aside the order of CIT (A) in all these four appeals and restore the matter back to the file of CIT (A) for decision on merit with the same directions as were given by the Tribunal in the above case as per Para reproduced above. In view of this decision, no adjudication on merit is called for at the present stage.

5. In the result, all the four appeals are allowed for statistical purposes.

*Order pronounced in the open court on 1<sup>st</sup> day of February, 2019*

Sd/-  
(A.K. GARODIA)  
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 1<sup>st</sup> February, 2019

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai