

**आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM**

आयकर अपील सं./ ITA No. 4635/Mum/2018

(निर्धारण वर्ष / Assessment Year 2008-09)

आयकर अपील सं./ ITA No. 4636/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

Zoom Realty Development Pvt. Ltd. A-53, Road No. 1, MIDC Industrial Area, Marol, Andheri (W), Mumbai-400 093	Vs.	The Income Tax Officer, Ward-11(3)(4), R.No. 429, Aayakar Bhavan, M.K. Marg Mumbai, Maharashtra-400 020
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAACZ 2725 L</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Shri Bharat Kumar, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri Chaudhary Arun Kumar Singh, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	15-01-2019
घोषणा की तारीख / <b>Date of pronouncement :</b>	28-01-2019

**आदेश / ORDER**

महावीर सिंह, न्यायिक सदस्य/  
**PER MAHAVIR SINGH, JM:**

These two appeals filed the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-18, Mumbai [in short CIT(A)], in



Appeals No. CIT(A)-18/IT-126 & 127/ITO-11(3)(4)/16-17 vide order even dated 25.04.2018. The Assessments were framed by the Income Tax officer, Ward 11(3)(4), Mumbai (in short 'ITO'/ AO) for the A.Y. 2008-09 vide order dated 29.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee first of all took us through the ground No. 1, wherein it is urged that the CIT(A) dismissed the appeal on technical ground and that also without affording adequate opportunity of being heard to the assessee. For this, assessee has raised the common grounds in both the appeals and the ground has raised in AY 2008-09 reads as under: -

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in dismissing appeal on technical ground that appeal filed in manual form without giving adequate opportunity to hear.”*

3. Briefly stated facts are that the assessment was framed by the AO under section 143(3) of the Act in both the years i.e. on even date 29.03.2016. The due date of filing of appeal before CIT(A) was 28.04.2016, but assessee manually filed appeal on both the years 25.04.2016 i.e. within the due date. The assessee contended that the CBDT issued circular for online filing of appeal for the first time on 01.03.2016 and vide this circular direction was issued to file appeal online upto 15.05.2016. But, the assessee could not file appeal online upto 15.06.2016 and CIT(A) issued notice intimating the assessee to file the appeal online dated 20.04.2018. Subsequently, the CIT(A) without



affording any opportunity of being heard, passed the order on 23.04.2018 and on that very date. The CIT(A)'s order was served on the assessee. Hence, there was no time for assessee to file the appeal online. It was contended that the assessee filed appeal before ITAT on 27.07.2019, which was delayed by 27 days for the reason that the assessee was searched by CBI with regard to some ongoing inquiry and director of assessee's company was also arrested on 02.05.2017 and was released from Jail on 01.06.2018. Hence, due to these reasons there was a delay of 27 days which he requested for condonation. We find that the cause is reasonable for delay and hence, we condone the delay and admit the appeals.

4. We find that in similar circumstances, this Tribunal in ITA No. 3713/Mum/2018 in the case of Shri Ashok Parthasarthy Sreenivasa vs. ACIT for AY 2013-14, vide order dated 06.08.2018 has considered the identical issue vide Para 2.2 and directed as under: -

*“2.2. We have perused the aforesaid order and also the decision from Delhi Bench of the Tribunal in the case of Shri Jagbir Singh Sharma vs ACIT (ITA No.809/Del/2017) order dated 05/06/2017. The Mumbai Bench of the Tribunal in a later decision dated 04/05/2018 has duly considered rule-45 of I.T. Rules, 1962, mandating compulsorily e-filing of appeals before the Ld. Commissioner of Income Tax (Appeal) w.e.f. 01st March, 2016, the decision from Hon'ble Apex Court in the case of State of Punjab vs Shaymlal Murari & Ors. (AIR)*



*(1976)(Supreme Court)1177, Ranikusum vs Kanchan Devi (AIR)(2005)(Supreme Court)3304, Gurinder Singh Dhillon vs Income Tax Officer (ITA No.6595/Del/2016), which are squarely applicable to the facts of the present assessee, because the Ld. Commissioner of Income Tax (Appeal) dismissed the appeal of the assessee in view of notification number S.O.637(E) dated 01st March, 2016, issued by CBDT amending rule-45 of the Income Tax Rules-1962, thus, considering the totality of facts and the aforesaid decisions, we direct the Ld. Commissioner of Income Tax (Appeal) to adjudicate the appeal of the assessee afresh on merit. The assessee be given opportunity of being heard with further liberty to furnish necessary evidence, if any, in support of his claim. The delay in e-filing the appeal is condoned and liberty is granted to the assessee to e-file the appeal before the Ld. Commissioner of Income Tax (Appeal) within 10 days from the receipt of this order. Thus, the appeal of the assessee is allowed for statistical purposes only.”*

5. In the similar circumstances, we grant the assessee 15 days' time to file the appeals before CIT(A) online, in both the years from the date of



ITAs No. 4635 & 4636/Mum/2017

receipt of this order. Hence, the CIT(A), accordingly, fix the hearing and allowed adequate opportunity of being heard to the assessee.

**6. In the result, the appeals of the assessee are allowed for statistical purposes.**

Order pronounced in the open court on 28-01-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)  
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)  
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-01-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai