

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
[Before Shri Pramod Kumar, Vice President]**

ITA No. 1950/Ahd/2017
Assessment Year : 2012-13

Anand Kantilal Shah

.....Appellant

*Represented by (Kantilal Shivlal Shah)-
Father and Legal Guardian,
3, Tulsishyam Apartments,
30, Dhanlaxmi Society,
Opp. Bank of Maharashtra, Maninagar,
Ahmedabad [PAN: ACNPS 4356 A]*

Vs.

Income Tax Officer

.....Respondent

Ward 6(1)(4), Ahmedabad

Appearances by:

Tushar P Hemani *for the appellant*

Jayant Jhaveri *for the respondent*

Date of concluding the hearing : 28.02.2019

Date of pronouncing the order : 24.05.2019

O R D E R

1. This appeal calls into question correctness of learned CIT(A)'s order dated 29.06.2017 for the assessment year 2012-13. Grievances raised are as follows:-

"1. The appellate order passed by the learned CIT(A) is bad in law on the grounds that it is contrary to the provisions of the Income Tax, facts and evidence on record and is therefore perverse. It is therefore prayed that the order of CIT(A) may please be cancelled.

2. The learned CIT(A) grossly erred in law and on the facts of the case in dismissing the appeal filed by the appellant and treating the same as defective.

3. The learned CIT(A) grossly erred in law and on the facts of the case without considering the principles of natural justice and without providing the opportunity of being heard in the matter to the appellant.

4. The learned CIT(A) grossly erred in law and on the facts of the case in dismissing the appeal of the appellant solely on the ground that the appeal was not filed electronically in utter disregard to the fact that as per the provision of section 139 of the Income Tax Act corresponding I.T. Rules, he

has not under the obligation to file return of income electronically he has option to file the return of income in manually in physical form.

5. The learned CIT(A) grossly erred in law and on the facts of the case in dismissing the appellant's appeal in utter disregard to provisions contained in clause (b) of the Sub-Rule (2) of Rule 45 of the Income Tax Rules, 1962.

6. The learned CIT(A) grossly erred in law and on the facts of the case without appreciating the non-feasibility of E-filing the appeal because of peculiar circumstances of the case and technical reasons explained in the submission filed before the CIT(A) in the course of appellate proceedings."

2. To adjudicate on this appeal, it is sufficient to take note of the fact that the appeal was dismissed summarily by the CIT(A) by observing as follows:-

"4.2 It is observed that the appellant did not file return of income and on the basis of certain information notice u/s 148 was issued for escapement of income. Since the appellant is not covered under the exempt category of E-filing of return therefore the E-appeal is compulsory in the case of the appellant in view of the rule 45 of the IT Rule.

4.3 During the appellate proceedings to ascertain the factual status, the ITBA system was checked to verify whether the appellant has filed the appeal electronically as mandated under Rule 45 of IT Rules. The ITBA verification showed that the appeal has not been filed electronically.

4.4 In view of the above facts, it is evident that the case of the appellant is covered by the provision of section 249 r.w. Rule 45 of IT Rules which lays down that every appeal shall be filed in the prescribed form and shall be verified in the prescribed manner. In this case the appellant had filed the appeal manually and was required to e-file in accordance with Rule 45 of IT Rules for the extended period i.e. 15.06.2016. Since, the e-appeal has not been filed as mandated under Rule 45 of IT Rules it is defective appeal which is non-maintainable and is being filed."

3. Aggrieved, the assessee is in appeal before the Tribunal.

4. I have heard the rival submissions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. When the appeal was called out for hearing, it was noticed that admittedly the appeal pertains to preamendment period, i.e. unamended rule 12(3) as in force prior to 01.04.2015, and, therefore, paper appeal was permissible. When it was pointed to the learned Departmental Representative, he simply relied upon the stand of the CIT(A) and did not elaborate further.

6. In view of the above discussions and with the consent of the parties, the appeal is remitted to the file of the CIT(A) for adjudication on merits. Ordered, accordingly.

7. In the result, appeal is allowed for statistical purposes. Pronounced in the open court today on the 24th May, 2019.

Sd/-

Pramod Kumar
(Vice President)

Ahmedabad, the 24th day of May, 2019

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Copies to:	(1)	The appellant	(2)	The respondent
	(3)	Commissioner	(4)	CIT(A)
	(5)	Departmental Representative	(6)	Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad