

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
ITA No.3827/Mum/2018
(Assessment Year :2015-16)

Administrator of the Estate of Late Eduji Framroze Dinshaw 412, Church Gate Chambers 5, New Marine Lines Mumbai-400 020	Vs.	ITO (IT)-2(1)(1) Room No.114, 1 st Floor SCINDIA House Ballard Estate Mumbai-400 038
PAN/GIR No.AAEPD8394A		
Appellant)	..	Respondent)

Assessee by	None
Revenue by	Anadi Varma
Date of Hearing	27/06/2019
Date of Pronouncement	31/07/2019

आदेश / ORDER

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against order of the Ld CIT(A)-56, Mumbai, dated 19/03/2018 and it pertains to Assessment Year-2015-16.

2. The assessee has raised following grounds of appeal:-

1) *For that on the facts and in the circumstances of the case, the CIT(A) was unjustified in law and on facts in dismissing the appeal on the ground that there was un-condonable technical defect of filing of the appeal manually instead of electronically.*

2) *For that on the facts and in the circumstances of the case, the CIT (A) ought not to have declined to adjudicate the appeal for the alleged technical defect at the threshold stage without giving the appellant opportunity of hearing and without granting the appellant opportunity of removing the alleged technical defect in filing of the appeal.*

3) *For that on the facts and in the circumstances of the case, the CIT (A) may kindly be directed to admit the appeal since the alleged technical*

defect of non filing of appeal electronically has since been remedied by the appellant on 5th April 2018 by e-filing the appeal.

4) For that on the facts and in the circumstances of the case, the CIT (A)'s order dated 19.03-2018 be set aside and/or cancelled and the CIT (A) be directed to admit the appeal filed manually as well as electronically on 5th April 2018 and be further directed to adjudicate the appeal on merits.

5) For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.

3. The brief facts of the case are that the assessee is a non-resident, individual derives income from capital gain and income from other sources, filed its return of income for AY 2015-16 on 28/08/2015, declaring total income at Rs. 1,49,19,780/-. The case was selected for scrutiny and the assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 29/12/2017, determining the total income at Rs. 21,98,52,980/- by making various additions including 12% share of gross receipts from M/s Ferani Hotels Pvt.Ltd. The assessee carried the matter in appeal before the CIT(A) and such appeal has been filed manually, even though e-filing of appeal is mandatory as per amended Rules . Therefore, the CIT(A) dismissed, appeal filed by the assessee for technical defect. Aggrieved, by the CIT(A) order, the assessee is in appeal before us.

4. None appeared for the assessee, we have heard Ld. DR and perused material available on record. The facts with regard to filing of appeal within the time provided under the Act, in manual form is

not disputed by the CIT(A). The Ld.CIT(A) has dismissed appeal, filed by the assessee for not filing appeal in electronic form as per amended Rule 45 which came into effect from 01/03/2016. No doubt, when law is very clear, in respect of filing of appeal in electronic form with effect from certain period, the taxpayer is duty bound to file such appeals in prescribed form without any deviation. But, dismissal of appeal for non filing of appeal in prescribed form without discussing the issues on merit certainly infringes, the right of the assessee, when the assessee has explained reasons for non-filing of appeals in prescribed format and also such technical defect has been removed by filing the appeal in prescribed format before this authorities. Further, the amended Rules which came into effect from 01/03/2016 may not be in the knowledge of tax payers, and for that reason, it is incorrect to furnish tax payers by dismissing their appeals. Therefore, we are of the considered view that the Ld.CIT(A) was erred in dismissal of appeal without discussing the issues on merits for non filing of appeal in electronic format. Hence, we set aside the appeal to the file of the Ld. CIT(A) and direct him to inform the assessee to rectify the defects in filing of appeal, if not done so far and also to decide the issues involved in the appeal on merits.

5. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 31 /07/2019

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 31 /07/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai