



ITA No.5160/Mum/2018

A.Y.2011-12

Durriya Ebrahim Khambati

आयकर अपीलीय अधिकरण “एक-सदस्य मजलस” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI

मजनीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आकरअपील सं./ I.T.A. No.5160/Mum/2018
 (निर्धारण वर्ष / Assessment Year:2011-12)

Durriya Ebrahim Khambati Room No.4, 1 st Floor, Sarang Street Masjid Bunder, Mumbai – 400 003	बनाम/ Vs.	ITO-17(1)(4) Mumbai
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAPPK-0170-L		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Akhtar H. Ansari- Ld.DR
Assessee by	:	None

सुनवाई की तारीख/ Date of Hearing	:	16/09/2019
घोषणा की तारीख / Date of Pronouncement	:	16/09/2019

आदेश / ORDER

Per Bench: -

1. The grievance of the assessee in this appeal stem from the fact that Ld. first appellate authority has dismissed the assessee’s appeal on technical ground as well as on the ground of delay. None has appeared for assessee and therefore, the matter is proceeded with ex-parte.



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2. Facts on record would reveal that the assessee has been assessed u/s 144 r.w.s 147 of Income Tax Act, 1961 on 14/01/2016 wherein the assessee was saddled with certain additions on account of alleged bogus purchases. The assessee preferred appeal against the same before first appellate authority manually in paper form on 12/07/2016 with slight delay. Another fact was that the appeal was filed in paper form, which as per extant Rule 45 effective from 01/03/2016, was to be filed in electronic form. Therefore, the appeal was dismissed by Ld. first appellate authority on account of technical violations without going into the merits of the case. Aggrieved, the assessee is in further appeal before us.

3. We find that the appeal before first appellate authority, in terms of CBDT Notification No. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL)], dated 1-3-2016, was required to file digitally in electronic form. The failure to file the same in the prescribed form has resulted into dismissal of appeal in *limine*. However, keeping in view the principles of natural justice and considering the fact that the assessee is an individual, we are of the considered opinion that mere technical lapses could not deprive the assessee to seek justice in deserving cases. Therefore, in terms of the judgment of this Tribunal rendered in *All India Federation of Tax Petitioners Vs. ITO [ITA No. 7134/Mum/2017 dated 04/05/2018]*, the assessee is directed to *e-file* the appeal in the prescribed manner before Ld. first appellate authority within 10 days from the date of receipt of this order. Thereafter, the Ld. first appellate authority is directed to admit the appeal and adjudicate the same on merits.



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4. The appeal stands allowed for statistical purposes.

Order pronounced in the open court on 16th September, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 16/09/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/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– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

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