

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR REHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA.NO. 306/MUM/2018 (A.Y: 2010-11)**

Shri Rajankumar Manchanda Plot No. 16, Sumila, 10 <sup>th</sup> Road JVPD Scheme, Juhu Juhu, Vile Parle Mumbai – 400 049  <b>PAN: AAEPM1846Q</b>	v.	Income Tax Officer – 10(3)(4) Room No. 554, 5th Floor Aayakar Bhavan, M.K. Road Mumbai – 400 020
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee by</b>	:	<b>Shri Rohit Golecha</b>
<b>Department by</b>	:	<b>Jothilakshmi Nayak</b>
<b>Date of Hearing</b>	:	<b>01.10.2019</b>
<b>Date of Pronouncement</b>	:	<b>28.11.2019</b>

**ORDER**

**PER C.N. PRASAD (JM)**

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-17, Mumbai [hereinafter for short "Ld. CIT(A)"] dated 31.10.2017 for the A.Y. 2010-11.

2. Learned Counsel for the assessee submitted that assessee has raised his grievance that the Ld.CIT(A) dismissed the appeal on technical

ground as the assessee has not filed the appeal in electronic form but filed manually. Assessee also challenged the order of the Ld.CIT(A) in confirming the penalty u/s. 271(1)(c) of the Act.

3. At the outset, Ld. Counsel for the assessee submitted that quantum appeal has been set-aside by the Tribunal in ITA.No. 4919/Mum/2014 dated 21.04.2016 (copy of the order is placed on record). Therefore, Learned Counsel for the assessee submitted that since quantum appeal has been set-aside penalty will not survive.

4. Ld. DR vehemently supported the orders of the authorities below.

5. On a perusal of the order of the Ld.CIT(A), we find that the appeal was dismissed off by the Ld.CIT(A) treating it as not maintainable observing that the manual appeal filed is not admissible as per provisions of section 249(1) of the Act. Thus, Ld.CIT(A) treated the appeal of the assessee as not maintainable and invalid. Since, the Ld.CIT(A) did not entertain the appeal itself we are of the view that this issue matter should go back to the file of the Ld.CIT(A) for admission of appeal at first instance and thereafter adjudication on merits of the issue.

6. In the case of All India Federation of Tax Practitioners v. ITO in ITA.No. 7134/MUM/2017 the Tribunal held that non-filing of appeal in the electronic form is only a procedural defect which can be cured and the Tribunal restored matter back to the file of the Ld.CIT(A) for disposal of appeal on merits and the assessee was directed to file appeal in electronic form within ten days on receipt of order. Similar view has been taken by the Coordinate Bench in the case of Media Net Software Services (India) Pvt. Ltd., v. ACIT in ITA.No. 362/Mum/2018 dated 27.02.2019. Following the above decisions, we restore this appeal to the file of the Ld.CIT(A) and assessee is directed to e-file the aforesaid appeal if not filed earlier, within a period of Fifteen (15) days from the date of receipt of this order, consequent to which delay in e-filing shall stand condoned and the Ld.CIT(A) shall dispose off the appeal on merits. Needless to say that the Ld.CIT(A) shall give adequate opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 28<sup>th</sup> November, 2019

Sd/-  
**(S. RIFAUR REHMAN)**  
**ACCOUNTANT MEMBER**  
Mumbai / Dated 28/11/2019  
Giridhar, Sr.PS

Sd/-  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**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.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**