



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.6209/Mum./2018
(Assessment Year : 2011-12)

Shri Chandanmal H. Bhansali
119/123, Bagoda Metal India
Dr. Mahimtura Marg
3rd Kumbharwada
Mumbai 400 004
PAN – AACPB8568Q

..... Appellant

v/s

Income Tax Officer
Ward-19(1)(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Smt. Jothilakshmi Nayak

Date of Hearing – 25.11.2019

Date of Order – 19.12.2019

ORDER

PER SAKTIJIT DEY, J.M.

The captioned appeal has been filed by the assessee challenging the order dated 5th July 2018, passed by the learned Commissioner of Income Tax (Appeals)-4, Mumbai, dismissing the appeal of the assessment year 2011-12 in limine due to non-filing in electronic form.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. Even, the assessee has not filed any application seeking adjournment. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and the material available on record.

3. Brief facts are, the assessee, an individual, filed his return of income for the year under consideration on 26th September 2011, declaring total income of ₹ 7,58,580. The assessment in case of the assessee was completed under section 143(3) r/w section 147 of the Income Tax Act, 1961 (for short "*the Act*") vide order dated 28th January 2016, determining the total income at ₹ 11,03,170. As it appears, against the assessment order so passed, the assessee filed appeal before the first appellate authority within the prescribed period of limitation, though, manually. In view of the amended rule-45 of the Income Tax Rules, 1962 requiring the assessee to file the appeal in electronic form, learned Commissioner (Appeals) issued a notice to the assessee appraising the aforesaid fact and fixing the date of hearing to 1st May 2018. As observed by learned Commissioner (Appeals), no one appeared on behalf of the assessee on the date fixed for hearing. Subsequently, the assessee filed letter dated 3rd May 2018 making submissions on the merits of the issue raised in the appeal. Being of

the view that the appeal filed by the assessee manually is not admissible as per section 249(1) of the Act, learned Commissioner (Appeals) dismissed the appeal in limine. However, he permitted the assessee to file the appeal in electronic form with a request for condonation of delay.

4. We have heard the learned Departmental Representative and perused the material on record. As per rule 45, introduced to the statute w.e.f. 1st March 2016, any appeal to be filed before the Commissioner of Income Tax (Appeals) under section 249(1) of the Act, has to be filed in electronic form. Facts on record reveal that the assessee filed the appeal before Commissioner of Income Tax (Appeals) manually. It is further evident, in response to the notice of hearing issued by learned Commissioner (Appeals), the assessee did not appear to rectify the defect. Therefore, the defect arising in the appeal due to non-filing in electronic form remained un-removed. Consequently, learned Commissioner (Appeals) dismissed the appeal of the assessee in limine. However, he has given liberty to the assessee to file the appeal again electronically with a request for condonation of delay. Considering the above, we direct the assessee to file appeal for the impugned assessment year before the learned Commissioner (Appeals) in electronic form, if he has not already filed it. On filing of the appeal in electronic form, learned Commissioner

(Appeals) should do well to condone the delay and decide the appeal on merits. With the aforesaid observations, the grounds raised are allowed for statistical purposes.

5. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 19.12.2019

Sd/-
N. K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 19.12.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai