

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

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER

ITA NO.145/MUM/2019(A.Y.2010-11)

Hemant D. Shah –HUF
25/104, Sati Kripa Shopping Centre,
Garodia Nagar, Ghatkopar (E)
Mumbai 400 077
PAN: AABHH2684E

..... Appellant

Vs.

ITO-27(1)(3)
Mumbai.

..... Respondent

Appellant by : None
Respondent by : Shri Dharm Veer Singh

Date of hearing : 14/01/2020
Date of pronouncement : 14/01/2020

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals)-25, Mumbai [in short 'the CIT(A)'] dated 06/08/2018 for the assessment year 2010-11.

2. The notice of the appeal was sent to the assessee through RPAD on 05/12/2019. As is evident from the acknowledgment card available on record, the notice was duly served on the assessee. Despite service of notice neither the assessee nor authorized representative of the assessee was present in the Court to defend the appeal. It seems that assessee is not interested in pursuing the matter

before the Tribunal. Therefore, the appeal is taken up for adjudication with the assistance of Id. Departmental Representative and the material available on record.

3. The brief facts as emanating from the records are: The assessee is a trader in shares and derivatives. In reassessment proceedings the Assessing Officer made addition of Rs.40,31,885/- in respect of Client Code Modification and Rs.60,478/- on account of unexplained expenditure under section 69C of the Act. Aggrieved against the assessment order dated 30/03/2016 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act'), the assessee filed appeal before the CIT(A). The first appellate authority rejected the appeal of assessee merely on the ground that the appeal has not been filed in E-mode in accordance with Rule 45 & 46 of the Income Tax Rules, 1962 as amended by Income Tax (Third Amendment) Rules, 2016 w.ef. 01/03/2016. Hence, the present appeal by the assessee.

4 Shri Dharm Veer Singh representing the Department vehemently defending the impugned order submitted that the assessee was required to E-file the appeal as per amended Rules. Since, the appeal has not been filed in the prescribed manner, the CIT(A) has rightly dismissed the appeal of assessee. The Id. Departmental Representative prayed for dismissing the present appeal of the assessee and upholding the order of CIT(A).

5. We have heard the submissions made by Id. Departmental Representative and have perused the orders of authorities below. The solitary reason for dismissing the appeal by first appellate authority was that the assessee has failed to file the appeal as per amended IT Rules. The appeal of the assessee has not been adjudicated by the CIT(A) on merits. Taking into consideration, entirety of facts, we deem it appropriate to restore this appeal to the file of CIT(A) for adjudication on merits after affording reasonable opportunity of hearing to the assessee, in

accordance with law. The assessee is also directed to remove the defects in filing of the appeal before the first appellate authority. The impugned order is set-aside and the appeal of the assessee is allowed for statistical purpose.

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

Order pronounced in the open court on Tuesday, the 14th day of January, 2020.

Sd/-
(N.K.PRADHAN)
ACCOUNTANT MEMBER

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 14/01/2020
Vm, Sr. PS(O/S)

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
Mumbai

ITAT,