

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA NO. 622/MUM/2019 : A.Y : 2009-10**

Sir Dorabji Tata Trust vs. ITO (Exemptions) – 2(3),  
Bombay House, Homi Mody Street, Mumbai. (Respondent)  
Mumbai 400 001.  
**PAN : AAATS0494G** (Appellant)

**Appellant by : Shri Sukhsagar Syal  
Respondent by : Ms. Jothilakshmi Nayak**

**Date of Hearing : 04/03/2020  
Date of Pronouncement : 13/07/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the assessee is directed against order of the learned CIT(A), wherein the learned CIT(A) has dismissed appeal of the assessee as not maintainable since the same was filed manually and not in electronic form, despite the assessee submitting before the learned CIT(A) that the appeal in electronic form has been duly filed.

2. Brief facts of the case are that the appeal filed by the assessee before the learned CIT(A) was in the manual form. The learned CIT(A) referred to CBDT notification for filing of appeal before CIT(A) in electronic form. He held

that since the appeal was not in electronic form, the same was not maintainable. The assessee stated that the appeal in electronic form has been duly filed on 22.11.2018.

3. However, the learned CIT(A) proceeded to reject the assessee's appeal by further observing that assessee can file appeal electronically.

4. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records. We find that learned CIT(A) has dismissed the appeal for having not filed the appeal in electronic form despite noting the assessee's submission that the same has also been duly filed. In our considered opinion, the order of learned CIT(A) is suffering from hyper-technicalities not sustainable in law. It is settled law that when substantial interest of justice is pitted against technicalities, it is the substantial interest of justice which prevails. In this regard, learned counsel of the assessee has submitted before us an order of this Tribunal in the case of ITA No. 7031/Mum/2018 vide order dated 16/1/2020.

5. In the said order, on identical facts, the Tribunal had inter-alia noted that filing of appeal before the learned CIT(A) is prescribed under Section 249 of the Income Tax Act, 1961 (in short 'the Act') and that there is no mandate in Section 249 of the Act to file it electronically. However, the Revenue has amended the corresponding Rule 45 for making mandatory e-filing of appeal for a specified category of assessees. The filing of appeal is made mandatory only from 01.03.2016. That there is no express mandate under Rule 45 to the learned CIT(A) to dismiss the appeal in case the appeal is not filed electronically. Having noted that the assessee has already filed the appeal

electronically, the ITAT has directed the learned CIT(A) to decide the same on merits.

6. In our considered opinion, on the facts and circumstances of this case, the ratio from the above discussion and case law duly apply to the present case. Accordingly, since the assessee has already filed the appeal to the learned CIT(A) in electronic form, as noted in the order of learned CIT(A) itself, the learned CIT(A) is directed to decide the same upon merits after giving the assessee proper opportunity of being heard.

7. Before parting, we note that this appeal was heard on 06.02.2020. The pronouncement is delayed due to lockdown in view of Covid-19 pandemic. The pronouncement is as per Rule 34(5) of Appellate Tribunal Rules and Hon'ble Bombay High Court decision vide order dated 15.04.2020 extending the time bound periods specified by Hon'ble High Court by removing the period under lockdown. This aspect is also dealt with in detail in ITAT Mumbai order in case of *DCIT vs JSW Steel* vide order dated 15.05.2020.

8. In the result, the appeal filed by the assessee stands allowed for statistical purpose.

Order pronounced in the court on 13<sup>th</sup> July, 2020 as per Rule 34(4) by placing the pronouncement list on notice board.

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 13<sup>th</sup> July, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai