

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 663/MUM/2019  
Assessment Year: 2010-11**

Tata Social Welfare Trust, Bombay House, Homi Mody Street, Mumbai - 400001 PAN: AAATT9834B	<b>Vs.</b>	The Income Tax Officer- (Exemptions) – 2(4), (Now assessed by the Assistant Commissioner of Income Tax (Appeals) – 17(3), 1 <sup>st</sup> Floor, Aaykar Bhavan, Maharshi Karve Road, Mumbai - 400020
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by: Shri Sukhsagar Syal (AR)

Revenue by : Shri V. Jenardhanan (DR)

Date of Hearing: 30/01/2020  
Date of Pronouncement: 21/02/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 22.11.2018 passed by the Commissioner of Income Tax (Appeals)-1 (for short 'the CIT(A), Mumbai, for the assessment year 2010-11, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act') on technical ground.

2. Brief facts of the case are that the assessee Trust registered as a Charitable Organization with DIT (E), Mumbai u/s 12A, filed its return of income for the assessment year under consideration declaring total income at Rs. Nil. The AO passed assessment order u/s 143(3) of the Act after rejecting the claim of depreciation amounting to Rs. 1,656/- and claim of shortfall in application of income amounting to Rs. 7,24,86,859/-. The assessee challenged the assessment order before the Ld. CIT (A) by filing the appeal manually. The

Ld. CIT (A) dismissed the appeal of the assessee as not maintainable on the ground that the appellant/assessee was required to file the appeal only in electronic form latest by 15.06.2016 which was not complied by the assessee.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *“On the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT (A) has erred in dismissing the appeal filed manually by the assessee.*

*The Appellant prays that the CIT to admit the appeal and decide the same on merits.*

2. *On the facts and under the circumstances of the case and in law, the learned CIT (A) erred in ignoring the electronically filed appeal by the Appellant and the condonation letter filed along with it*

*The Appellant prays that the CIT (A) be directed to admit the electronically filed appeal.*

3. *On the facts and under the circumstances of the case and in law, the learned CIT (A) erred in making an incorrect observation that appeal filed manually may not be proceeded with.*

*The Appellant prays that such erroneous observation be deleted and the appeal filed admitted.”*

4. Before us, the Ld. counsel for the assessee submitted that since the assessee had filed the appeal manually within the limitation period, the Ld. CIT (A) ought to have condoned the delay in filing appeal electronically and decided the same on merits. The Ld. counsel placing reliance on the decision of the ITAT, Mumbai in the case of *Prakash M. Jain vs. ITO ITA No. 2264/Mum/2018, AY 2010-11*, submitted that the impugned order may be set aside and the Ld. CIT (A) may be directed to admit the appeal filed electronically by the assessee and decide the case on merits.

5. On the other hand, the Ld. DR submitted that since the assessee had manually filed the appeal before the Ld. CIT (A), the Ld. CIT (A) issued letter dated 22.11.2018 informing the assessee that the appeal filed manually is not maintainable in view of the circular of the CBDT, however, the assessee did not

respond the same. Hence, the Ld. CIT (A) has rightly dismissed the appeal treating the same as not maintainable.

6. We have heard the rival submissions and carefully perused the material on record. The Ld. CIT (A) has dismissed the appeal filed by the assessee on the ground that as per the CBDT Circular the manual appeal filed is not admissible as per provisions of section 249 (1) of the Act.

7. In the case of *Prakash M. Jain vs. ITO ITA No. 2264/Mum/2018, AY 2010-11*, the coordinate Bench has decided the identical issue in favour of the assessee. In the said case, the assessee had manually filed the appeal before the CIT (A), which was within the limitation period. However, the assessee filed the appeal electronically in terms of the circular of the Central Board of Direct Taxes (CBDT), however, beyond limitation period. The Ld. CIT (A) dismissed the appeal of the assessee on the ground that the appeal filed by the assessee is barred by law of limitation. The assessee challenged the impugned order before the Tribunal. The coordinate Bench allowed the appeal of the assessee holding as under:-

*“4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We noticed that the CIT (A) did not decide the case on merits. The assessee filed the appeal manually before the CIT (A) on 18.04.2016 which was well-in-time. However, the assessee has filed the appeal electronically on 14.07.2016 which was delayed by one month. The CIT (A) has dismissed the appeal on account of filing the appeal delayed electronically by one month i.e. on 14.07.2016. The CIT (A) did not condone the delay. On appraisal of the record, we noticed that in fact the assessee has filed the appeal manually on 18.04.2016 which was well in time. The delay of filing the appeal electronically is not so much delay specifically in the said circumstances when the case is liable to be decided on merits. The assessee has challenged the addition of Rs. 7,57,199/- on account suspicious purchase. The matter of controversy is required to be adjudicate on merits, therefore, in the interest of justice we condone the delay and restored the matter before the CIT (A) to decide the matter afresh by giving an*

*opportunity of being heard to the assessee in accordance with law. Accordingly, the appeal filed by the assessee is hereby allowed for statistical purpose.  
In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purposes.”*

8. Since, the coordinate Bench has dealt with the similar issues in the case of *Prakash M. Jain* (supra) and restored the appeal to the Ld. CIT (A) for deciding the same on merits and since the issues involved in the present case are similar, we respectfully following the decision of the coordinate Bench, condone the delay if any in filing appeal electronically and restore the file to the Ld. CIT (A) for deciding the appeal afresh on merits after affording a reasonable opportunity of being heard to the assessee. However, we direct the assessee to appear before the Ld. CIT (A) as and when called and not to seek adjournments on frivolous grounds.

In the result, appeal filed by the assessee for assessment year 2010-2011 is allowed for statistical purposes.

Order pronounced in the open court on 21<sup>st</sup> February, 2020.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 21/02/2020

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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