

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

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1800/M/2019
Assessment Year: 2013-14**

Mr. Ashok Harish Mehra, Prop. M/s. P. Manulal & Co., 2 nd Ground Floor, Jaihind CHS Ltd., Harimangalam, JVPD Scheme, Mumbai – 400 049 PAN: AACPM6548D	Vs.	ACIT-18(1), Earnest House Nariman Point, Mumbai - 400023
(Appellant)		(Respondent)

Present for:

Assessee by : Shri SS. Phadkar, A.R.
Revenue by : Shri Michael Jerald, D.R.

Date of Hearing : 12.03.2020
Date of Pronouncement : 27.05.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 11.03.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The issue raised in ground of appeal is against the order of Ld. CIT(A) dismissing the appeal in limine on the ground that appeal was not e-filed within a stipulated time.

3. The facts in brief are that the assessee filed the appeal in manual form before the CIT(A) on 31.03.2016 well within the time limit as prescribed under the Act against the assessment order under section 143(3) of the Act dated 10.11.2015. The Ld. CIT(A) observed that the assessee has not e-filed the appeal which is mandatory in terms of Central Board of Direct Taxes notification No.SO 637(E) [F.No.149/150/2015-TPL] dated 01.03.2016.

4. The assessee e-filed the appeal on 17.04.2018 whereas the Ld. CIT(A) dismissed the appeal on 11.03.2019 by observing and hoding as under:

“4. The matter has been considered. In its submission, the appellant has submitted that the appeal have been e-filed on 17.04.2018 on Income Tax Portal after publishing circular No.20/2016 dated 26.05.2016. As a matter of fact, no prejudice will be caused to the electronically filed appeal for the year under reference. The issues involved and condonation of delay will be considered at the time of appellate proceedings arising out of e-filed appeal. However, the manual appeal filed is not admissible as per provisions of Section 249(1) of the Act. Hence, this appeal is treated as not maintainable and invalid abinito.”

5. After hearing the rival parties and perusing the material on record, we observe that in this case the assessee has manually filed the appeal well within the time. Thereafter, the assessee e-filed the appeal on 17.04.2018 well before the date of dismissal of assessee's appeal by the Ld. CIT(A). In our view, the action of the Ld. CIT(A) can not be sustained as the assessee has duly filed the manual appeal well within the time and thereafter also filed e-appeal on 17.04.2018. Once the assessee has filed e-appeal, the appeal filed by manually merged automatically with the e-appeal and the Ld. CIT(A) should have decided the appeal on merit. In our view, the said non filing of appeal is a technical

mistake on the part of the assessee and assessee can not be punished for the same. In the present case Ld. CIT(A) has decided the manual appeal only leaving the issue to be decided on merit at the time of adjudicating the e-appeal. Thus he dismissed the manual appeal as not being maintainable in terms of section 249(1) of the Act. The action of the ld CIT(A) is also against the ratio laid down in the decision of the co-ordinate Bench in the case of All India Federation of Tax Practitioners vs. ITO in ITA No.7134/M/2017 A.Y. 2013-14 order dated 04.05.2018. The operative part whereof is reproduced as under:

“6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of I.T. Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1st March 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e. I.T. Act, 1961.

As per the facts of the present case, the assessment in the above case was completed u/s 143(3) of the I.T. Act 1961. However the assessee has filed appeal before Ld. CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of 'State of Punjab Vs. Shyamal Murari and others reported in AIR 1976 (SC) 1177' has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon'ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice.

The Hon'ble Apex Court has said in an 'adversarial* system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation.

The Hon'ble Supreme Court in its judgement reported as AIR 2005 (SC) 3304 in the case of 'Rani Kusum Vrs. Kanchan Devi,' reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and

is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed.

From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgement of Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations.

Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Dei/16 in case titled Gurinder Singh Dhillon Vrs. ITO had restored the matter to the file of Ld. CIT(a) under identical circumstances with a direction do decide appeal afresh on merit, after condoning the delay, if any.

Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner.

Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Ld. CIT(A) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we allow the appeal filed by the assessee.

7. In the net result the appeal filed by the assessee is allowed."

6. After perusing the above decision, we find that the case of the assessee stands on the better footing as in the above case no electronic filing has been done whereas the assessee has filed e-appeal on 17.04.2018. We, therefore, respectfully following the ratio laid down by the co-ordinate Bench restore the appeal to the file of the Ld. CIT(A) with a direction to decide the same on merits.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.05.2020.

**Sd/-
(Pawan Singh)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 27.05.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.