

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 2051/Mum/2019 (Assessment Year 2008-09)

Pankaj Kantilal Shah 502/503, Shubham Apartment, 51 st TPS Road, Babhai Naka Borivali West Mumbai-400 091. PAN : AACPS8839B (Appellant)	Vs.	DCIT-32(2) C-11, Room No. 308, 3 rd Floor Pratyakshakar Bhavan, Bandra Kurla Complex Bandra-East Mumbai-400 051. (Respondent)
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Assessee by	Shri Praveen Jain
Department by	Shri Vodal Raj Singh
Date of Hearing	21.10.2020
Date of Pronouncement	23.10.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 8.2.2019 and pertains to A.Y. 2008-09.

2. The preliminary issue raised is that learned CIT(A) erred in dismissing the appeal in limine on the Technical ground that the return was not filed electronically.

3. Brief facts of the case are that pursuant to the assessment order dated 19.2.2016 assessee filed appeal before the learned CIT-A on 11.4.2016 in paper form. Learned CIT-A noted that from the current assessment year the appeal before the learned CIT-A was to be filed in electronic mode. The assessee before the final order of learned CIT(A) filed electronic appeal on 29.1.2019. The learned CIT-A held that since it was mandatory for the

assessee to file appeal electronically, he dismissed the original appeal in limine on the technical ground he held as under :-

“In view of the facts and law discussed above, I am of the considered opinion, that the present Paper appeal filed by the appellant on 11.04.2016 is an invalid appeal, as the same was not filed in prescribed form and verified in prescribed manner as stipulated under the statute and hence the same is not maintainable. Hence, the present Paper appeal filed on 11.04.2016 is treated as invalid and not maintainable and accordingly all the grounds raised therein are DISMISSED, as not maintainable. The contention of the appellant that subsequent appeal filed on 29.01.2019 in modified/revised Form No. 35 electronically should be treated as valid and condone the delay in filing appeal electronically is considered and I am of the considered opinion that the same does not require adjudication, as the same is not relevant to adjudicate the present appeal filed in paper form and which is under consideration.

In the result, the present appeal filed in paper form on 11.4.2016 is dismissed as not maintainable, without adjudicating the various grounds/issues raised therein on merits.”

4. Against this order assessee is in appeal before us.
5. We have heard both the counsel and perused the records. We find that in the present case the learned CIT-A has not adjudicated upon merits the appeal filed before him. Though the assessee has duly e-filed the appeal before the passing of learned CIT(A) order, he has dismissed the same as unadmitted on the ground that the assessee was required file the appeal electronically . Since it was not so done originally learned CIT-A dismissed the appeal. It is the plea of the assessee that this was the first year when it was required that the appeal should be filed electronically. It is prayed that there were some technical glitches and accordingly it is prayed that the appeal should be admitted and proper order on the adjudication of the same should be given.
6. Upon careful consideration we find that the assessee's plea is that it was the first year of the requirement of the appeal to be filed electronically and there were some technical glitches. It is prayed that in the interest of justice the appeal should be adjudicated on merits. Further we note that this assessment order was passed on 19.2.2016. Rule 45 of the Income Tax Rules mandates for filing of appeal w.e.f. 1.3.2016. However, there is a grey area as

the Rules do not specify any cut-off date for the date of assessment orders. In this view of the matter there can be two view possible that the said Rule would not apply to assessment orders passed prior to the same. This view draws support from the decision of honourable Supreme Court in the case of Vegetables Product Ltd. (88 ITR 192) for the proposition that if two views are possible the one in favour of the assessee should be adopted.

7. Accordingly in our considered opinion the request by the learned counsel of the assessee deserves proper consideration. We note that it is settled law that in the web of hypertechnicality justice should not take a backseat. As noted by learned CIT(A) himself the assessee has already filed the appeal electronically before him.

8. Accordingly we remit the issue to the file of learned CIT-A. Learned CIT-A directed to consider the issues raised on merits and pass by speaking order after giving proper notice to the assessee.

9. In the result assessee's appeal is allowed for statistical purposes.

Order pronounced under Rule 34(4) of the ITAT Rules on 23/10/2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 23/10/2020

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS