

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH MUMBAI  
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
ITA No.1125/Mum/2019 (Assessment Year 2011-12)

Mr. Bhanulal B. Kanani, 304, Suraj Kiran Building, Anand Nagar, Dahisar (East), Mumbai-40068 <b>PAN: AAGPK5008E</b>	Vs.	ITO-32(1)(3), C-11, Room No. 210, 2 <sup>nd</sup> Floor, Pratyakshkar Bhavan, BKC, Mumbai-40051.
---	-----	---

Appellant

Respondent

Appellant by : None  
Revenue by : Shri Udaya Bhaskar Jakke (DR)  
Date of Hearing : 06.10.2020  
Date of Pronouncement : 13.10.2020

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

1. When the appeal was called for hearing, no one was present for the assessee to represent the case. Accordingly, I dispose of the appeal *ex-parte qua* the assessee after hearing the Id. Departmental Representative.
2. I have heard the Id. Departmental Representative and perused the material available on record. On perusal of record and more particularly, the memorandum of appeal in Form-36 and accompanying documents, it is noticed that the assessee has preferred the present appeal against the assessment order passed on 12.12.2018 under section 144 r.w.s 147 of the Act, 1961. It is further noticed, the registry of the Tribunal had issued a notice dated 28.02.2019 to the assessee pointing out the following defects:
  1. Appeal fee is short by Rs. 9000/-.

2. Order of CIT(A) under section 250 not filed.
  3. Grounds of appeal before the CIT(A) not filed.
  4. Form 35 not filed/not filed in duplicate.
3. In response to the said notice, the assessee in letter dated 02.04.2019 has again accepted the fact that the present appeal has been preferred against the assessment order passed under section 144 r.w.s. 147 of the Act. Undisputedly, an assessment order passed u/s. 144 r.w.s 147 of the Act is not an appealable order under section 253(1) of the Act. On the contrary, against the assessment order passed under section 144 r.w.s. 147 of the Act, the assessee has a remedy by way of appeal before Id. Commissioner of Income Tax (Appeals) under section 246/246A of the Act. Instead of availing such remedy, the assessee has directly filed the appeal before this Tribunal. Prima facie, the aforesaid appeal is not maintainable. Accordingly, I have no hesitation in dismissing the appeal in limine without being admitted.
4. In the result, appeal of the assessee is dismissed.

Order pronounced by placing in the notice board as per rule 34(4) of the Income Tax (Appellate Tribunal) Rules on 13<sup>th</sup> October 2020.

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

Mumbai, Date: 13.10.2020

SK

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)

4. The concerned CIT
5. DR "SMC" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai