

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

**BEFORE SHRI C. N. PRASAD, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 2551/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s D. V. Builders & Developers Pvt. Ltd. B-29, Shop No. 8 & 9, Dreamland CHS Ltd., Sector 11, Near TMT Bus Depo, Shanti Nagar, Mira Road (east), Thane-401107	बनाम/ Vs.	DCIT 12(2)(1), 2 nd floor, Aayakar Bhavan, M.K. Road, New Marine Line, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCD1205B		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Hitesh Shah, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Bharat Anshle, DR
सुनवाईकीतारीख/ Date of Hearing	:	26.11.2020
घोषणाकीतारीख / Date of Pronouncement	:	11.12.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 20 in

short referred as 'Ld. CIT(A)', Mumbai, dated 14.03.19 for Assessment Year (in short AY) 2013-14.

2. The main contention of the assessee that Ld. CIT(A) has dismissed the appeal of the assessee on the ground that it was digitally signed by the Director of the assessee and without giving opportunity for the removal of technical defects if any in furnishing the appeal in Form No. 35, dismissed the appeal.

3. At the outset, Ld. AR appearing on behalf of the assessee submitted that Ld. CIT(A) has not adjudicated the grounds of appeal of the assessee on merits and dismissed the appeal of the assessee on the ground that it was digitally signed by the Director of the assessee without giving any opportunity for the removal of technical defects if any in furnishing the appeal in Form No. 35. Therefore, he prayed the present appeal be restored back to the file of Ld. CIT(A) for adjudicating the grounds on merits.

4. On the other hand, Ld. DR relied on the orders passed by the revenue authorities.

5. Considered the rival submissions and material placed on record, we notice that Ld. CIT(A) has not adjudicated the merits of the case of assessee and dismissed the appeal on the ground that it was not signed by the assessee without giving any opportunity for the removal of technical defects. The perception may have been that after pointing out the defect and seeking clarification the said action should have been followed up with a specific opportunity to cure the defect. We noticed from the document submitted before us that the assessee has signed digitally and Ld. CIT(A) has not referred to those papers on oversight. On considering we find that however ill advised, misconceived and obdurate stand the assessee may have taken, still specific opportunity to cure the defect cannot be denied. The purpose of the remedy provided in the Act by way of filing an appeal ought not to be allowed to be defeated on technicalities. The defect being an irregularity ought to be allowed to be rectified by way of an opportunity to cure the same. Accordingly in the interest of substantial justice we see no good reason as to why the assessee should be deprived of seeking adjudication on merits after having cured the defect. The object of Courts is to

decide the rights of parties and not to punish them for their mistakes in the conduct of their cases and that the proper function of the Court was not in such cases to impose discipline but to decide the points of controversy.

6. Therefore, considering the above, we are of the view that the present case is a fit case for restoring the issue back to the file of the CIT(A) with the directions to give the assessee a specific opportunity to rectify the defects if any during the proceedings and to decide the case on merits. Accordingly, the grounds raised by the assessee are **allowed for statistical purposes**.

7. In the net result, the appeal of the assessee is treated as **allowed for statistical purposes**.

Order pronounced in the open court on 11/12/2020.

<i>Sd/-</i> (C. N. Prasad) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 11.12.2020
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent

3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai