

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, Hon'ble JUDICIAL MEMBER AND
Dr. SHRI ARJUN LAL SAINI, Hon'ble ACCOUNTANT MEMBER

(Virtual Hearing)

आ.अ.सं./I.T.A No.23/SRT/2017

निर्धारण वर्ष/Assessment Year: 2012-13

Smt. Bhartiben Sureshchandra Patel, C/o. Shaileshbhai G.Patel, Bhagwati Bunglow, Maninagar Society, Tithal Road, Valsad – 396001. [PAN: DWAPP 6193 J]	Vs.	The Income Tax Officer (International Taxation), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओर से /Assessee by	None.
राजस्वकीओर से /Revenue by	Smt. Anupama Singla – Sr.DR

सुनवाई की तारीख/ Date of hearing:	17.05.2021
उद्घोषणा की तारीख/Pronouncement on:	17.05.2021

आदेश / O R D E R

PER PAWAN SINGH, JUDICIAL MEMEBER:

1. This appeal by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-13, Ahmedabad, hereinafter referred as “Ld. CIT(A)”, dated 31.05.2017 for assessment year (AY) 2012-13. The assessee has raised the following grounds of appeal:

“[1] Lr.CIT[A], Ahmedabad has erred in law and on facts to dismiss appellant’s appeal ex-parte i.e. without going into the merits of the case, overlooking the fact that the appellant is NRI, permanently residing at U.K. and received PAN, online only on dt. 6/7/2017. Therefore, electronically filing of appeal is impossible for want of DSC.

[2] Lr.CIT[A], Ahmedabad has erred in law and on facts to discuss and decide appellant's ground for reopening of her assessment u/s 147 and issue of notice u/s 148 of the Act.

[3] Lr.CIT[A], Ahmedabad has erred in law and on facts to discuss and decide appellant's case on merits with respect to addition of Rs.19,85,000/- made by the A.O; that too mentioning any "Head of income in assessment order."

2. Brief facts of the case are that the assessee is an individual and is staying at United Kingdom (UK) and having status of Non Resident Indian (NRI). The case of the assessee was reopened under section 147 of the Act on 09.07.2015. The notice under section 148 of the Act dated 09.07.2015 was issued to the assessee after recording the reasons for reopening. The case was reopened on the basis of information from the office of Income Tax Officer, Ward-4, Valsad that in the case of Shri Shailesh G Patel for the A.Y. 2012-13, the Assessing Officer (AO) noted that assessee being an NRI had given Rs.39 lakhs to Shri Shailesh G Patel in A.Y. 2007-08. Shri Shailesh G Patel is the brother of the assessee. The assessee received Rs.58,85,000/- from her brother. Therefore, the AO was of the view that assessee earned interest income of Rs.19.85 lakhs (58,85,000 – 39,00,000= 19,85,000). Since no Return of Income is filed by assessee, the AO was of the view that assessee is liable to be taxed in India in respect of interest income earned by her in India. The AO noted that after service of notice under section 148 of the Act, no

compliance was made by assessee nor any Return of Income was filed. The AO required certain details by issuing notice under section 142(1) of the Act and asked the assessee as to why Rs.19,85,000/- should not be treated as interest income. The AO further noted that in response to the show cause notice Shri Rajesh M. Upadhyay appeared on behalf of the assessee and furnished written submission. In the reply, it was explained that on behalf of assessee that assessee made payment of Rs.39 lakhs to her brother in Financial Year (F.Y.) 2006-07 for creation of specific right in the land in Parnera Pardi. Her brother, Shri Shailesh G Patel decided to sell the land in F.Y. 2011-12 (year under consideration) the assessee mutually agreed to release her specific share on sale of such property for on consideration of Rs.58.85 lakhs. The assessee received such amount as per Memorandum of Understanding (MOU) with her brother. Accordingly, the Shri Shailesh G Patel, brother as paid the amount as per the agreement. The explanation furnished by assessee not accepted. The A.O. was of the view that though details of payment are found to be correct. However, the MOU do not seems to be genuine as the same is not authenticated by competent authority. The assessee claimed Long Term Capital Gain [LTCG] for amount of Rs.19,85,000/-, which cannot be accepted as the assessee has not provided any valid and registered document. The AO completed the assessment under

section 144 r.w.s 147 of the Act on 20.12.2016 and assessed the income of the assessee at Rs.19,85,000/-.

3. Aggrieved by the additions, the assessee filed appeal before the ld.CIT(A) on 25.01.2017. The assessee filed paper form. The ld.CIT(A) issued show cause notice dated 05.05.2017 as to why appeal should not be treated as invalid as per Amended Rule 45 of Income Tax Rules, which mandates compulsory filing of electronic appeal before the ld.CIT(A) w.e.f. 01.01.2016. The ld.CIT(A) recorded that the assessee not responded to the show cause notice and accordingly appeal was not admitted and dismissed vide order dated 31.05.2017. Further aggrieved, the assessee has filed this appeal before this Tribunal.
4. None appeared on behalf of the assessee. On perusal of the record, we find that appeal of the assessee was dismissed being not admitted as the appeal was not filed Electronically. The Ld. CIT(A) has not adjudicated the appeal on merit. Further, the Ld. CIT(A) has not recorded whether show cause notice dated 04.05.2017 was served either on the assessee or on her Representative. This fact was confronted with the ld.Sr.Departmental Representative (Sr.DR) for the Revenue. The assessee filed paper appeal after cut-off date as provided in CBDT Notification No.50637/(e) dated 01.03.2016 r.w.s 249 (1) r.w.s 295 of the Act. The assessee has not followed the mandate of Rule 45 of Income Tax Rule 1962. On the basis of aforesaid notification the ld.Sr.DR tried to defend the order of Ld. CIT(A) on the ground that after amendment of Rule 45 of Income Tax

Rules, the assessee was required to file first appeal before the Ld. CIT(A) electronically. The ld.Sr.DR further confronted that in a no.of appeals on dismissing the appeal for the want of filing appeal electronically, the appeals were restored to the file of Ld. CIT(A) to adjudicate the appeal on merit after giving the opportunity to the assessee to comply the formalities Rule 45 of Income Tax Rules. The Ld.Sr.DR submits that the Bench may take decision in accordance with law.

5. We have considered the submission of ld. Sr.DR for the Revenue and the statement of facts attached with Form 36 (Appeal Form). In the statement of facts, the assessee stated that he is non-resident and no Return of Income was filed for A.Y. 2012-13 as there was no taxable income for said year. The Assessing Officer made addition of Rs.19.50 lakhs on account of interest income. Aggrieved by the additions, the assessee filed appeal before the Ld. CIT(A). The appeal of assessee was dismissed by the Ld. CIT(A) for technical reason as Rule 45 of Income tax Rules 1962 was amended w.e.f. 01.03.2016 and that appeal was instituted on 25.01.2017. The ld.CIT(A) dismissed the appeal for technical reasons and without discussing the merit of the case as mandated under section 250(6) of the Act. We have further noted that, though the Rule 45 amended w.e.f 01.03.2016, without corresponding amendment in Section 249 of Income Tax Act. It is settled position of law that Rule cannot substitute the statutory provision. Hence, keeping in view of the aforesaid facts, the appeal is restored back to the file of Ld. CIT(A) to adjudicate the appeal on merit. The assessee is also directed to comply the procedure for filing

appeal electronically as per the amended Rule 45 of Income Tax Rules 1962, if no such appeal is filed electronically. The assessee is given liberty to file proper application for seeking condonation of delay, if so required for admission of appeal before the ld.CIT(A). The ld.CIT(A) is further directed to consider the application for condonation of delay, if so filed, sympathetically by taking facts for his consideration that after dismissal of his appeal by first appellate authority, the assessee was pursuing his remedy before the Tribunal for seeking restoration of appeal, accordingly, appeal of the assessee is allowed for statistical purpose.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced on 17th May, 2021 at the time of hearing of the appeal.

Sd/-

(Dr. ARJUN LAL SAINI)

(लेखा सदस्य/ACCOUNTANT MEMBER) (न्यायिक सदस्य/JUDICIAL MEMBER)

सुरत/ **Surat**, दिनांक **Dated:** 17th May 2021 / **SGR**

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)

Guard file of ITAT.

Sd/-

(PAWAN SINGH)

By order

/ / TRUE COPY / /

Assistant Registrar, Surat