

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 7787/मुं/2019 (नि.व 2015-16)
ITA NO.7787/MUM/2019 (A.Y 2015-16)

Kem Light Laboratories Private Limited.,
A-1305,Exotica Samarpan,
Next to Western Edge No.2,
Dattapada Road, Borivali (East)
Mumbai 400 066

PAN-AAACP2371G

..... अपीलार्थी /Appellant

बनाम Vs.

The ITO-12(3)(2),
Room No.147-A, 1st Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rahul Sarda

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 03/06/2021

घोषणा की तिथि/ Date of pronouncement : 03/06/2021

आदेश/ ORDER

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'the CIT(A)] dated 23/10/2019 for the assessment year 2015-16.

2. Shri Rahul Sarda appearing on behalf of the assessee submitted that the CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee on technical ground. The Id. Authorized Representative of the assessee submitted that while filing Form

No.35, against Column No.2a seeking the “Details of Order appealed against” the assessee inadvertently mentioned section 143(1) instead of section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’). The CIT(A) dismissed the appeal of assessee on the ground that there is no provision to rectify mistake in Form No.35. Since, the defect is incurable, the appeal is dismissed. The Id.Authorized Representative of the assessee submitted that the assessee has a very good case on merits. If an opportunity is granted to the assessee to appear before the CIT(A), the assessee would succeed on merits. The Id. AR further undertakes to rectify the mistake in Form No.35.

3. On the other hand, Shri Sanajay J. Sethi representing the Department vehemently defended the impugned order. The Id. Departmental Representative submitted that apart from the defect in mentioning wrong section under which the Order appealed is passed, the grounds of appeal raised in Form No.35 by the assessee are vague. The relief sought by the assessee against the assessment order is not emanating from the grounds.

4. Both sides heard, impugned order examined. The CIT(A) in an ex-parte proceedings has dismissed the appeal of assessee on technical ground i.e. wrong mention of section under which the Order appealed is passed. The assessee has mentioned section 143(1) instead of section 143(3) of the Act. It is trite law that rules of procedure are meant as hand made of justice to facilitate attainment of justice in an orderly way. Rigid interpretation of rules would sometime result in injustice and travesty of its purpose, therefore, the rules have to be interpreted liberally for advancement of justice. Rejecting appeal by taking pedantic or hyper-technical view on technical defects would result in miscarriage of justice and multiplicity of litigation. Without expressing any opinion on merits of the issue involved in the appeal, I deem it appropriate to restore the appeal to the file of CIT(A) for deciding the appeal afresh on merits, in accordance with law.

The assessee is directed to rectify the defect(s) in Form No.35. Liberty is granted to the assessee to furnish modified grounds of appeal, if so advised.

5. The impugned order is set-aside and the appeal of assessee is allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open Court on Thursday, the 03rd day of June, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 03/06/2021

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai