

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI**

BEFORE SHRI SAKTIJIT DEY (JM)

**ITA No.6953/MUM/2019
Assessment Year: 2013-14**

Mr. Jacob Varghese, 1902, Sai Sapphire, Bldg. No. 04, Powai Vihar Complex, Mumbai - 400076 PAN: AAFPV0425P	Vs.	ITO 26 (1) (4), C-11, 7 th Floor, Pratayksha Kar Bhavan, BKC, Bandra (E) - 400051
(Appellant)		(Respondent)

Assessee by : None

Revenue by : Shri Saurabh Kumar Rai (DR)

Date of Hearing : 24/05/2021

Date of Pronouncement: 04/06/2021

ORDER

This is an appeal by the assessee against the order dated 30.08.2019 of learned Commissioner of Income Tax (Appeals) – 38, Mumbai for the assessment year 2013-14.

2. When the appeal was called for hearing, none was present on behalf of the assessee. However, the assessee has filed letter dated 13.05.2021 seeking adjournment. Considering the nature of dispute involved in the present appeal, I am not inclined to accede to assessee's request for adjournment. Hence, I proceed to dispose of the appeal ex-parte qua the assessee with the assistance of learned Departmental Representative and on the basis of material available on record.

3. Briefly the facts are, the assessee is an individual. For the assessment year under dispute, the assessee had filed his return of income on 30.09.2013

declaring total income of Rs. 8,07,658/-. Assessment in case of the assessee was completed under section 143(3) of the Act vide order dated 29.03.2016 determining the total income at Rs. 33,16,830/-. Against the assessment order so passed the assessee preferred an appeal before learned Commissioner (Appeals). The appeal filed by the assessee was dismissed by the First Appellate Authority in limine vide the impugned order.

4. I have heard the learned Departmental Representative and perused the material on record. Prima facie, learned Commissioner (Appeals) has dismissed the appeal filed by the assessee in limine, that too, in an ex-parte order. The reason being, the assessee had filed the appeal manually and not electronically as per the extant rule and circular issued by CBDT requiring filing of appeal before the First Appellate Authority electronically from w.e.f. 15.06.2016. It further appears from the impugned order of learned Commissioner (Appeals) a single show cause notice was issued to the assessee seeking his response by 30.08.2019 and since no reply was received from the assessee, learned Commissioner (Appeals) decided the appeal ex-parte without providing further opportunity to the assessee. Of course, while dismissing the appeal, learned Commissioner (Appeals) has granted liberty to the assessee to again file the appeal electronically and seek condonation of appeal. In my view, before deciding the appeal ex-parte, learned Commissioner (Appeals) should have provided reasonable opportunity to the assessee to rectify the defect, if any, in filing the appeal. In the aforesaid view of the matter, I deem it appropriate to set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to his file for afresh adjudication. In case the assessee has not filed the appeal in electronic form yet, he is directed to do so within a period of two weeks from the date of receipt of this order. On filing of the appeal by the assessee in pursuance to the aforesaid direction, the learned Commissioner (Appeals) would do well to condone the delay, if any, in filing the appeal and decide the appeal on merits after due opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

5. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 4th June, 2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 04/06/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.
सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai