

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.662/M/2019
Assessment Year: 2010-11**

M/s. Sir Dorabji Tata Trust, Bombay House, Homi Mody Street, Mumbai - 400001 PAN: AAATS0494G	Vs.	Income Tax Officer (Exemptions)-2(3), (Now assessed by the Deputy Commissioner of Income Tax (Exemptions)- 2(1), 5 th Floor, Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sukhsagar Syal, A.R.
Revenue by : Shri Sushil Kumar Mishra, D.R.

Date of Hearing : 09.07.2021
Date of Pronouncement : 23.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 28.11.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. The only issue raised by the assessee in the various grounds of appeal is against the dismissing the appeal of the assessee by 1d CIT(A) on the ground that assessee has not filed the appeal electronically within the due time.

3. The facts in brief are that the assessee filed appeal before the Ld. CIT(A) in manual form on 02.05.2016 against the assessment order dated 22.03.2016 framed under section 143(3) read with section 147 of the Act. The Ld. CIT(A), after referring to the notification No.SO637(E)/[No.11/2016 (F.No.149/150-TPL)], dated 01.03.2016 and circular No.20/2016 dated 26.05.2016, observed that assessee has not filed the appeal electronically by 15.06.2016 which is the last date for filing the appeal in terms of the aforementioned notification/circular. The Ld. CIT(A) also noted that assessee has filed appeal in an electronically on 22.11.2018 which delayed by more than 29 months. The Ld. CIT(A) finally dismissed the appeal of the assessee by holding that the appeal was to be mandatorily filed electronically in the first instance as per the amended provisions as contained in rule 14 of Income Tax Rules, 1962 which are effective from 01.03.2016. The said date is further relaxed and extended by circular No.20/2016 dated 26.05.2016 even which was not complied with by the assessee. Consequently, the appeal of the assessee was dismissed as not maintainable by Ld CIT(A) with the liberty that assessee is free to e-file the appeal once again with a request of condonation of delay.

4. At the outset, the Ld. Counsel of the assessee submitted that similar issue also came up before the co-ordinate bench of the Tribunal in assessee's own case in ITA No.622/M/2019 A.Y. 2009-10 and the co-ordinate bench of the Tribunal has decided the same in favour of the assessee by directing the Ld. CIT(A) to decide the appeal filed by the assessee in electronic mode on merit after giving a reasonable opportunity of hearing to the assessee. The Ld. A.R. prayed before the Bench that similar

direction may kindly be given to the Ld. CIT(A) by restoring the matter back to the file of the Ld. CIT(A).When the ld DR is confronted with the facts, he left the issue to the wisdom of the bench.

5. After hearing both the parties and perusing the material on record, we note that undisputedly the assessee has filed appeal in manual form on 02.05.2016 and also filed in electronic mode on 22.11.2018, however, Ld. CIT(A) by referring to the notification and circular as cited above came to conclusion that assessee has not complied with the provisions as contained in rule 45 of Income Tax Rules, 1962 and circular No.20/2016 dated 26.05.2016. In this case, we find that assessee has filed the appeal in electronic form also which was pending before the Ld. CIT(A) on the date of dismissing the appeal. In our opinion, the Ld. CIT(A) has failed to decide the appeal of the assessee on merit and thus the assessee is deprived of its lawful and legitimate right of being heard before the appellate order is passed. The decision of the Ld. CIT(A) is against the decision of the Apex Court in the case of Collector, Land Acquisition vs. Mst. Katiji 167 ITR 471 (SC) wherein it has been held that where a substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserved to be preferred over technicalities. We also note that the similar issue has been decided by the co-ordinate bench of the Tribunal in ITA No.622/M2019 A.Y. 2009-10 in assessee's own case as stated supra and the operative part of the decision is reproduced as under:

"4. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records. We find that learned CIT(A) has dismissed the appeal for having not filed the appeal in electronic form despite noting the

assessee's submission that the same has also been duly filed. In our considered opinion, the order of learned CIT(A) is suffering from hypertechnicalities not sustainable in law. It is settled law that when substantial interest of justice is pitted against technicalities, it is the substantial interest of justice which prevails. In this regard, learned counsel of the assessee has submitted before us an order of this Tribunal in the case of ITA No. 7031/Mum/2018 vide order dated 16/1/2020.

5. In the said order, on identical facts, the Tribunal had inter-alia noted that filing of appeal before the learned CIT(A) is prescribed under Section 249 of the Income Tax Act, 1961 (in short 'the Act') and that there is no mandate in Section 249 of the Act to file it electronically. However, the Revenue has amended the corresponding Rule 45 for making mandatory e-filing of appeal for a specified category of assessees. The filing of appeal is made mandatory only from 01.03.2016. That there is no express mandate under Rule 45 to the learned CIT(A) to dismiss the appeal in case the appeal is not filed electronically. Having noted that the assessee has already filed the appeal electronically, the ITAT has directed the learned CIT(A) to decide the same on merits.

6. In our considered opinion, on the facts and circumstances of this case, the ratio from the above discussion and case law duly apply to the present case. Accordingly, since the assessee has already filed the appeal to the learned CIT(A) in electronic form, as noted in the order of learned CIT(A) itself, the learned CIT(A) is directed to decide the same upon merits after giving the assessee proper opportunity of being heard."

6. We, therefore, respectfully following the decisions as discussed above, restore the issue back to the file of the Ld. CIT(A) with the direction to decide the appeal already filed by the assessee in an electronic mode on merit after giving a fair opportunity of hearing to the assessee.

7. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23.07.2021.

**Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 23.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.