

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.865/M/2020
Assessment Year: 2013-14**

Falgun Mahesh Oza, 301, Cheznous, Gulmohar Cross Road No.7, JVPD Scheme, Vile Parle (W), Mumbai – 400 049 PAN: AAAP00474A	Vs.	Income Tax Officer- Ward 22(1)(3), Piramal Chambers, Parel, Mumbai – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Mitali Gopani, A.R.
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 24.08.2021
Date of Pronouncement : 14.09.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 12.11.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. In the ground No.1 the assessee has challenged the order of Ld. CIT(A) dismissing the appeal on technical ground of not filing the appeal electronically.

3. The facts in brief are that the assessee filed a manual appeal against the order of AO passed under section 143(3) on 25.04.2016 before the first appellate authority. The Ld. CIT(A) observed that since the assessee has not filed the appeal

electronically as per rule 45 & 46 of Income Tax Rules which is in violation of CBDT notification No.20/2016 dated 26.05.2016. Accordingly, a show cause notice dated 04.01.2019 was issued as to why the appeal filed physically should not be treated as invalid and void ab-initio as per section 249(1) of the Act which was replied by the assessee vide letter dated 23.01.2019 stating that they have filed the appeal against the assessment order dated 21.01.2019 electronically also. Finally, the Ld. CIT(A) dismissed the appeal filed manually with the following observations:

“4. The show cause letter was duly served on the appellant. In response, the AR of the appellant filed its reply dated 23/01/2019 stating that they have e-filed appeal against the assessment order of ITO-22(1)(3), Mumbai for AY 2013-14 on 21/01/2019.

The matter has been considered. After the issue of show cause letter, it is seen that the appellant has filed the appeal electronically on 21/01/2019 for the impugned assessment year 2013-14. Thus, there would be no prejudice caused to the electronically filed appeal. The issues involved and condonation of delay will be considered at the time of appellate proceedings arising out of e-filed appeal.

5.2 The manual appeal filed is not admissible as per provisions of Section 249(1) of the Act. Consequently, this appeal is treated as not maintainable and invalid abinitio. Accordingly, there would be no cause to examine any other aspect of the appeal, including other statutory procedures, deficiency in documents or the merits of the case, etc.

6. As a result, the manual appeal filed by the appellant for A.Y. 2013-14 is treated as dismissed, u/s. 250 r.w.s 251 of the Act.”

4. After hearing both the parties and perusing the material on record, we find that in this case the physical appeal filed by the assessee on 25.04.2016 has been dismissed on the ground that same has not been filed electronically. Thereafter, the assessee filed e-appeal on 21.01.2019 which has been noted by the Ld. CIT(A) while dismissing the appeal of the assessee. However, the appeal filed physically was dismissed. It has been argued by

the Ld. Counsel before us that the issue may kindly be set aside to the file of the Ld. CIT(A) with a direction to decide the issue on merit after condoning the delay of filing the appeal.

5. Having considered the arguments of both the sides, we are inclined to set aside the issue to the file of Ld. CIT(A) with the direction to decide the issue on merit in terms of the co-ordinate Bench of the Tribunal in the case of All India Federation of Tax Petition vs. ITO in ITA No.7134/M/2017 dated 04.05.2018 and Grasim Developers vs. ACIT in ITA No.2998/M/2018 dated 10.09.2018. Accordingly, we restore the issue back to the file of the Ld. CIT(A) in terms of our above observations.

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

Order pronounced in the open court on 14.09.2021.

**Sd/-
(Mahavir Singh)
VICE PRESIDENT**

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

Mumbai, Dated: 14.09.2021.

* 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.