

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 7964/Mum/2019 (Assessment Year 2013-14)

Shri Ravi K. Sheth M/s. Kalyaniwalla & Mistry LLP Esplanade House 2 nd Floor, 29, Hazarimal Somani Marg, Fort, Mumbai-400 001. PAN : AAIPS7341E (Appellant)	Vs.	DCIT, Range- 5(3)(2) Room No. 573 5 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Mehali Golwala
Department by	Shri Bharat Andhle
Date of Hearing	17.08.2021
Date of Pronouncement	28.10.2021

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the assessee directed against the order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 31.10.2019 pertaining to assessment year 2013-14.

2. Grounds of appeal read as under :-

“This appeal is filed against the order passed by Commissioner of Income Tax (Appeals)-10, Mumbai and relates to Assessment Year 2013-14.

- 1) The learned Commissioner of Income Tax (Appeals) erred in holding that the appeal is not maintainable.
- 2) The learned Commissioner of Income Tax (Appeals) erred in not granting an opportunity to the appellant to cure the alleged defect.
- 3) The learned CIT (A) erred in failing to consider that the defect, if any, was a venial defect.
- 4) Having regard to the facts and circumstances of the case, the appellant submits that the learned Commissioner of Income Tax (Appeals) be directed to admit the said appeal and dispose off the same on merits.

- 5) The learned Commissioner of Income Tax (Appeals) erred in not accepting the computation of "Income from House Property" in respect of Flat No.12B in building called "Manek" as returned by the appellant.
- 6) The learned Commissioner of Income Tax (Appeals) erred in ignoring the decision of the Supreme Court and the jurisdictional High Court which had already interpreted the provisions of Section 23(l)(a).
- 7) Having regard to the facts and circumstances of the case and the provisions of law, the appellant submits that the learned Commissioner of Income Tax (Appeals) be directed to accept the income from house property in respect of Flat No.12B in building called "Manek" as returned by the appellant."
3. Brief facts the assessee is an individual deriving income from salary, house property, capital gains and other sources. The assessee had e-filed a return of income for AY 2013-14 on 30/07/2013 by declaring total income at Rs. 6,03,62,120/- and Long Term capital loss at (-) Rs. 85, 27,721/-. The return was processed u/s 143(1) of the Act and subsequently selected for scrutiny. An assessment u/s 143(3) of the Act determining the total income at Rs. 6,24,75,560/- was concluded on 29/01/2016, determining income from House Property at Rs. 21,09,010/-.
4. Upon assessee's appeal learned CIT(A) observed that this appeal is filed in manual form on 15/03/2016 against the order u/s. 143 of the Act 1961. That therefore, before he proceed further to determine the merits of the issue involved in the grounds of appeal, the issue of admissibility of this appeal, needed to be examined first. He observed that it is seen that vide Notification No. SO 637(E) [NO.11/2016 (F.NO.149/150/ 2015-TPL)], dated 1.3.2016 the Central Board of Direct Taxes (CBDT) has substituted rule 45 of the Income-tax Rules, 1962. After referring to the notification learned CIT(A) held as under:-

5.4 The Circular No.20/2016 [F.NO.279/MISC/M-54/2016/ITJ], dated 26-5-2016 which is reproduced above in the beginning itself clarifies that "Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals before Commissioners of Income Tax (Appeals) with effect from 1.3.2016 in respect of persons who are required to furnish return of income electronically" and concludes with the stipulation that "taxpayers who could

not successfully e-file their appeal and had filed paper appeals are required to file an e-appeal in accordance with Rule 45 before the extended period *i.e.* 15-6-2016. Such e-appeals would also be treated as appeals filed within time.

5.5 Therefore, the appeal filed manually by the appellant on 15/03/2016 is held to be not maintainable and hence dismissed.

5.6 However, the dismissal of this appeal would not cause any prejudice to the appeal filed electronically subsequently. The issues involved, including the issue of condonation of delay will be considered during the course of appellate proceedings emanating from e-filed appeal.

5. Against the above order the assessee is in appeal before us.

6. We have heard both the parties and perused the records. Learned counsel of the assessee claimed that learned CIT(A) has wrongly dismissed the appeal as on-maintainable on the web of hyper technicality. In this regard he pleaded that the ITAT in similar cases has directed the learned CIT(A) to pass speaking order on the merits of the case.

7. Upon careful consideration we note that this ITAT in ITA No. 3868 & 3869/Mm/2018 vide order dated 4.12.2020 held as under :-

“5. We have heard both the counsel and perused the records. We find that in the present case the learned CIT(A) has not adjudicated the appeal filed before him. He has dismissed the same as un-admitted on the ground that the assessee was required file the appeal electronically. Since it was not so done the learned CIT(A) dismissed the appeal. It is the plea of the assessee that this was the first year when it was required that the appeal should be filed electronically. It is prayed that there were some technical glitches and accordingly it is prayed that the appeal should be admitted and proper order on the adjudication of the same should be given.

6. Up on careful consideration we note that the Income Tax Act in section 249 does not directly provide for electronic filing of appeal. It is provided in section 249 read with Rule 45 of the Income Tax Rules read with the Notification No. SO-637(E) dated 1.3.2016 by CBDT that electronic filing of appeal before CIT(A) is prescribed. We find that the assessee's plea is that it was the first year of the requirement of the appeal to be filed electronically and there were some technical glitches.

7. Further we note that learned CIT(A) has himself admitted in his order that electronic appeal was duly filed before the date of his appellate order.

8. Accordingly in our considered opinion the request by learned Counsel of the assessee deserves proper consideration on the facts and circumstances referred above. We note that it is settled law that in the web of hypertechnicality justice should not take a backseat. As already noted the assessee had already filed the appeal electronically, which was before learned CIT(A) before his passed his appellate order.
9. Accordingly we remit the issue to the file of learned CIT(A). Learned CIT(A) directed to consider the issues raised on merits and pass a speaking order after giving proper notice to the assessee.”
8. Further the ITAT in ITA No. 7134/Mum/2017 vide order dated 4.5.2018 held as under :-

“6. We have heard the counsels for both the parties and we have also perused the material placed on record as well as orders passed by the revenue authorities. From the records we noticed that electronically filing of the appeals was introduced for the first time vide rule 45 of I.T. Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1st March 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e I.T. Act, 1961. As per the facts of the present case, the assessment in the above case was completed u/s 143(3) of the I.T. Act 1961. However the assessee has filed appeal before Ld. CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962. After having considered the entire factual position, we find that Hon’ble Supreme Court in the case of ‘State of Punjab Vs. Shyamalal Murari and others reported in AIR 1976 (SC) 1177’ has categorically held that courts should not go strictly by the rulebook to deny justice to the deserving litigant as it would lead to miscarriage of justice. It has been reiterated by the Hon’ble Supreme Court that all the rules of procedure are handmaid of Justice. The language employed by the draftsman of procedural law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of Justice. The Hon’ble Apex Court has said in an ‘adversarial’ system, no party should ordinarily be denied the opportunity of participating in the process of Justice dispensation. The Hon’ble Supreme Court in its judgement reported as AIR 2005 (SC) 3304 in the case of ‘Rani Kusum Vrs. Kanchan Devi,’ reiterated that, a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of Justice. Any interpretation, which eludes or frustrates the recipient of Justice, is not to be followed. From the facts of the present case, we gathered that the assessee had already filed the appeal in paper form, however only the e-filing of appeal has not been done by the assessee and according to us, the same is only a technical consideration. In this respect, we rely upon the judgement of Hon’ble Supreme Court, wherein the Hon’ble Supreme Court has reiterated that if in a given circumstances, the technical consideration and substantial Justice are pitted against each other, then in

that eventuality the cause of substantial Justice deserves to be preferred and cannot be overshadowed or negated by such technical considerations. Apart from above we have also noticed that the Coordinate Bench of Hon'ble ITAT Delhi Bench in appeal ITA No. 6595/Del/16 in case titled Gurinder Singh Dhillon Vrs. ITO had restored the matter to the file of Ld. CIT(a) under identical circumstances with a direction to decide appeal afresh on merit, after condoning the delay, if any. Since in the present case, we find that appeal in the paper form was already with Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) ought not to have dismissed the appeal solely on the ground that the assessee has not filed the appeal electronically before the appellate Commissioner. Keeping in view the facts and circumstances as well as the case laws discussed and relied upon above, we are of the considered view that the cause of Justice would be served in case, we set aside the orders of Ld. CIT(A) & allow the present appeal. While seeking the compliance, we direct the assessee to file the appeal electronically within 10 days from the date of receipt of this order. In case, the directions are followed then in that eventuality, the delay in e-filing the appeal shall stand condoned. Ld. CIT(A) is further directed to consider the appeal filed by the assessee on merits by passing a speaking order. Resultantly, we allow the appeal filed by the assessee."

9. Since the facts are similar, respectfully follow the precedent we remit the issue to the file of learned CIT(A) to pass order on merits of the case by following the precedent as above.

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

Pronounced in the open court on 28.10.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 28/10/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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