

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Laliet Kumar (JM)

ITA Nos.628 to 632/Mum/2021
(Assessment Years: 2011-12 to 2015-16)

Estate of Ramniklal Rajmal Mehta C/o M M Nissim & CO LLP 3 rd Floor, B Wing, Barodawala Mansion Dr A B Road, Worli Mumbai-400 018	Vs.	DCIT, CC-8(3) Room No.659, 6 th Floor Aaykar Bhawan, M.K.Road Mumbai-400 020
PAN/GIR No. BVFPR9968B		
(Assessee)	:	(Revenue)
Assessee by	:	Shri Nitesh Joshi
Revenue by	:	Ms. R.M.Madhvi
Date of Hearing	:	30.11.2021
Date of Pronouncement	:	30.11.2021

ORDER

Per Shri Laliet Kumar (J.M.):

These appeals by the Assessee are directed against the respective orders of the learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short) pertain to the respective assessment years as above.

2. Since the issues are common and connected and the appeals were heard together, these have been consolidated and disposed of by this common order.

3. Grounds of appeal read as under:-

1. The Ld. Commissioner of Income tax (Appeals) erred in treating the appeal filed in physical mode as invalid and not maintainable as the same was not filed and verified in prescribed form and manner as stipulated under the statute without appreciating the facts that appeal was already accepted and partly heard by his predecessors.

2. It is submitted that the PAN of the appellant was disabled for Log-in Facility on E-filing Portal. The Learned Assessing Officer confirmed the same. Under the circumstances the CIT(A) accepted the appeal in physical mode.
3. It is submitted that CIT(A) having accepted the appeal in physical mode as valid cannot reject the appeal as not maintainable.
The Conclusion arrived at by the Learned Commissioner of Income tax (Appeals) is contrary to the facts and against the principle of natural justice. The Appeal filed in physical mode shall be restored for adjudication.

4. Brief facts Appellant before us had filed an appeal in Paper form on 23/01/2019 against the order of AO dated 28/12/2018. Thereafter, the appellant had filed revised Form No.35 in Paper Form on 27/01/2020 on account of change of communication address. The Rule 45 of the I.T.Rules mandates requires compulsory filing of the e-appeals before the Ld.CIT(A) w.e.f from 01/03/2016.

5. As the assessee has not filed the appeal in the electronic form, therefore the Ld.CIT(A) vide impugned order had dismissed the appeal, treating the appeal as invalid. Paragraph 6.5 and 6.6 of the appellate order it was mentioned as under:-

6.5 It is well settled law that right of appeal is neither an absolute nor an ingredient of natural justice, the principle of which must be followed in judicial and quasi-judicial adjudication. The right to appeal is a statutory right and it can be circumscribed by the condition in the grant. If a statute gives right to appeal upon certain conditions, it is upon fulfillment of those conditions that the right becomes vested in and exercisable by the appellant. **The provisions of sec 249(1) expressly stipulates that appeal u/s 246A of the Act can only be filed in prescribed form and verified in prescribed manner.** The provisions of sec 249 (1) of the Act prescribes that every appeal under this Chapter shall be filed in prescribed form and shall be verified in the prescribed manner and shall, in case of an appeal made to the Commissioner (Appeals) on or after the 1st day of October 1998, irrespective of the date of initiation of the assessment proceedings relating thereto be accompanied by fees prescribed therein. Further the provisions of sec 249 (3) and (4) of the Act gives the discretion to the CIT(A) for admitting an appeal beyond statutory time limit and non adherence of provisions contained in sec 249(4)(b) of the Act. However, no such discretion is stipulated in the Act for non adherence of provision of sec 249(1) of the Act. The usages of word "**Shall**" in provisions of sec 249(1) suggest that filing of appeal in prescribed form and verified in prescribed manner is mandatory and under the statute the Commissioner (Appeals) has no power to waive or condone the same. If the appeal is not filed in prescribed form/manner then the same has to be treated as invalid and not maintainable and the CIT(A) has no discretion to admit the same as valid appeal. It is not the case that the memorandum of appeal is deficient in its enclosures wherein the appeal can be treated as defective and the CIT(A) has discretion to accept the appeal

memorandum and get the defects removed. While adjudicating the requirement of payment of appeal fees, as prescribed in statute, the Hon'ble ITAT Hyderabad in ACIT vs. D.E. Shaw India Software P Ltd reported in 64 taxmann.com 95 has laid down similar law after holding as under.

"As can be seen from the above, if the memorandum of appeal is deficient in its enclosures, as prescribed, then only the Tribunal can exercise its discretion to accept the memorandum of appeal. In the present appeals, the enclosures are not defective but the fee payable as per the statutory provisions of section 253(6) was not paid. **Since the Memo of Appeal is not accompanied by the fee, as prescribed, we are of the opinion that there is no discretion to the ITAT to accept Memorandum of Appeal filed, in violation of the statutory provisions, ITAT being a quasi-judicial body under the I.T. Act, it has to follow the statutory provisions as prescribed.** Under analogous circumstances, while dealing with an appeal filed by an assessee against the order passed under section 271 FA, the ITAT, Cochin Bench in the case of Sub-Registrar Office. Meppayur - Kozhikode v. DfT (intelligence) [2013] 37 taxmann.com 36/[2014J 64 SOT 10 (URO) observed that **the** Tribunal cannot travel beyond the provisions of the Act and cannot admit an appeal even if the opponent party gives consent permitting the appellant to file an appeal. **In** other words, the consent of a litigant party would not confer jurisdiction on a quasi judicial authority unless and until it is otherwise conferred under the statute".

Further, the Hon'ble ITAT, Hyderabad in the case of Central Rural Studies & Development Madakasira vs. ACIT, reported in 45 taxmann.com 343 has not admitted the appeal filed in view of short payment of appeal fees, which is procedural in nature.

6.6 In view of the facts and law discussed above, I am of the considered opinion, that the present Paper appeal filed by the appellant on 23.01.2019 is an invalid appeal, as the same was not filed in prescribed form and verified in prescribed manner as stipulated under the statute and hence the same is not maintainable. Hence, the present Paper appeal filed on 23.01.2019 is treated as invalid and not maintainable and accordingly all the grounds raised therein are DISMISSED, as not maintainable. The contention of the appellant that they have filed e-appeal on 12.03.2021 is not relevant to adjudicate the present appeal filed in paper form and which is under consideration.

6. It was the contention of the Ld. AR for the assessee, that the assessee has filed the appeal in e-form on 12/03/2021 urging condonation of delay in filling of the appeal .

7. To justify the filling of the paper appeal it was submitted by the AR that Shri Ramniklal R.Mehta father of Shri Dilip R Mehta passed away on 07.04.2002. At the time of his death he was holding the PAN No.AAHPM1917B. It was further the contention of the Ld. AR that search in the case of Rosy Blue Group had taken place on 25.08.2011 and a notice under section 153A of the Act was issued to the Estate of Ramniklal R Mehta under the same PAN number. Mr. Dilip R Mehta, legal heir of the

Late Shri Ramniklal R Mehta filed the returns of the Estate using the same PAN number.

8. Ar further submitted that, on 28.05.2014, the Shri Dilip R. Mehta applied for a new PAN in the name of the Estate of Ramniklal R Mehta and a new PAN number bearing No. BVFPR9968B was allotted to the Estate of Shri RamniklalR.Mehta.

8.1 It was argued by the Ld. AR that after 30.06.2018 Shri DilipR.Mehta could not login to the website of the revenue through the newly allotted PAN number and was not able to pay the taxes and file an appeal against the order passed by the AO dated 28/12/2018

8.2 The assessee try to find out the reasons for non accessibility of the ITBP website, however in response to the submissions of the assessee , a reply was sent to the CPC wherein it was mentioned as under;-

“ As you are a Minor, you are not authorized under the law to login out of Legal Functionalities as per the Income tax Act. You may request the legal guardian to represent you and perform the required functions. In case your legal guardian has not registered in e-filing request the guardian to register in e-filing.”

9. To show the willingness to file the appeal in electronically and for its redressal , the assessee, had also approached to the AO regarding his failure to access through portal vide communication dated 15/01/2019. AO after receiving the communication ,informed to the assessee as under:-

“On perusal of the above request and as per the discussion with the AR of the assessee, a ticket was raised from the office on ITBA Portal of the Income tax Department on 15.01.2019 bearing ticket no. 669759. The ticket raised is reproduced as under:-

“The assessee has filed grievance letter regarding logging to the e-filing portal. The details of the issue is as under:

The assessee is the legal Representative of the Estate of Late Ramniklal R. Mehta having assessed to PAN . BVFPR9968B which is formed pursuant to Death of Late Mr. Ramniklal R Mehta on 07.04.2002. As per the Death Certificate and as per the PAN Database of the Estate Date of Birth of Estate is the Date of Death of MrRamniklal R Mehta i.e 07.04.2002. The assessee is not able to log-in on Income tax Website as the error shown on the screen is that the Assessee is minor and has to login through legal representative. Application by the legal representative has been rejected on the ground that Date of Death is not matching with the income tax Database. The assessment order under section 143(3) r.w.s. 147 has been passed by the Assessing Officer on 28.12.2018. Assessee intended to file the appeal before Commissioner of Income tax (Appeals) within 30 days of the aforesaid order since the legal representative in neither able to log-in directly on the income-tax website nor able to register the aforesaid PAN BVFPR9968B through Legal Representative Gateway to enable him to file the appeals. The letter filed by the assessee along with following documents are attached herewith for your ready reference:

1. PAN of the Estate of Ramniklal R Mehta
2. Screenshot showing error on Direct Login
3. Reasons received from CPC, Bengaluru rejecting the application for registration through Legal Representative.
4. Screenshot showing error with respect to Date of Death
5. Death Certificate.

The response received from the ITBA on 15.01.2019 is as follows.”Contact e-filing helpdesk”. Accordingly, the e-filing helpdesk was contacted for the same; however, no solution for logging in has been arrived at despite multiple calls and the grievance as well as the ticket are still outstanding.

10. In the above said background, the Ld. AR submitted that the assessee had preferred to file the appeal in physical form, so that it should not be alleged that there was delay on the part of assessee in preferring the appeal, though it was mandatory as per Rules 45 to file the appeal electronically. It was again submitted that since now the appeal had been preferred by assessee in the electronic form on 12/03/2021, therefore suitable directions be issued toLd.CIT(A) for passing the order on merit after condoning the delay in filing the appeal.

11. On the other hand Ld. DR had submitted that the order has passed by the Ld. CIT(A) dismissing the filing the appeal in the electronic form is correct and in accordance with law.

12. We have heard the rival contentions of both the parties and perused the material available on record, including the decision of this Tribunal in the matter of Om Swami Smaran in ITA No. 213/M/2019 at page No.114 of paper book. Admittedly as Rule 45 of the I.T.Rules, the appeal is required to be filed in the electronic form and the assessee is duty bound to file the appeal in electronic form. Rule 45 of the I.T.Rules provides as under:-

“45. (1) An appeal to the Commissioner (Appeals) shall be made in Form no.35
(2) Form no.35 shall be furnished in the following manner, namely:-
(a) in the case of a person who is required to furnish return of income electronically under sub-rule (3) of rule 12.
(i) by furnishing the form electronically under digital signature, if the return of income is furnished under digital signature;
(ii) by furnishing the form electronically through electronic verification code n a case not covered under sub-clause(i).”

13. Admittedly, during the assessment proceedings before the AO Mr D R Mehta appeared in the assessment proceedings, his statement was also recorded. The AO in paragraph 6.5 and 6.12 had categorically recorded as under:-

6.5 Assessee's contention is however, not acceptable. Enquiries pertaining to PAN KYC have been conducted with NSDL e-Governance Infrastructure Ltd, from which it is seen that the present PAN (i.e., BVFPR9968B) has been obtained in the name of the assessee - i.e., in the name of the Estate of Late Shri Ramniklal Mehta. While the original application was made on 28.05.2014, an application requesting for change of address was made as late as on 13.09.2017. An affidavit was filed on 03.05.2017 by Shri DilipRamniklal Mehta stating that he is the Executor of the Estate. Further, returns have been regularly filed on this PAN by the assessee, assessments have been done and taxes have been paid. The assessee has also been appearing in appellate proceedings before the higher appellate authorities. This clearly shows that the Estate is still functioning and that the assessee's contention that the Estate has ceased to exist, is incorrect and remains unsubstantiated. Further, as noted above, the Singapore information includes several amendment deeds pertaining to each of the family trusts, whereby the members of the family have been added and removed as beneficiaries from time to time. Thus, there does not seem to be any sense of finality and therefore, the Estate cannot be said to have been distributed/dissolved/ceased to exist. There is absolutely no evidence of distribution/dissolution of the Estate after the previous assessment. In the absence of any concrete evidences filed by the assessee, the Estate is held to be still surviving and assessment is being made in the hands of the Estate.

6.12 Lastly, assessee has stated, "*you have not referred to any information/document with shows that the Estate was in any way associated with the entity (M/s. Red Oak Operations Ltd./White Cedar Investment Ltd.) or four trusts (Veer Trust, Mahaveer Trust, Pine Trust and Beech Trust) named in the reassessment proceedings*". However, the assessee's contention cannot be accepted. As noted in the reasons for reopening reproduced above, following the search on 25.08.2011, the return in the case of Estate of (Late) Ramniklal R Mehta for AY 2006-07, was filed on 04.03.2013 even after his death on 07.04.2002, showing total income of Rs 11,47,13,590/-, which includes the income to the extent of Rs. 11,46,72,012/- [i.e. 5.73% of the peak credit as on March 2006 in the said HSBC bank account J. The remaining part [Rs 41,578/-] was shown as bank interest. During the assessment proceedings for AY 2006-07 u/s 153A r.w.s. 143(3) of the IT Act, Shri DilipRamniklal Mehta (who is the Executor of the Estate) had stated that the proceeds of the jewellery owned by his father Late Shri RamniklalRajmal Mehta were deposited in the account of the investment company, White Cedar Investments Limited and the amount deposited amounted to **Rs.** 11,46,72,012/- as on March 2006 and the assessee would pay tax on this amount. Thus, the assessee itself had admitted that the funds in the name of White Cedar/Red Oak actually represented the undisclosed wealth of Late Shri RamniklalRajmal Mehta.

The assessment was completed by adding the remaining amount of investment in the said HSBC bank account; and the total income was determined vide order dated 30.05.2014 u/s 153A/143(3) at Rs 20P,12,56,838/-. The addition so made has been confirmed by the CIT(A) vide his order dated 10.03.2017. The assessments for AY 2007-08 to AY 2012-13 were also completed u/s 153A/143(3). The income shown in those years was on account of (nominal) bank interest. The tax payable thereon was nil. Balance sheet filed for all these years reflects investments in shares, cash in hand and cash in bank. The bank balance as on 31.03.2011 [A.Y.2011-12] is shown at Rs 18,10,153/- whereas that as on 31.03.2012 [A.Y.2012-13] is shown at Rs 6,31,08,137/-. The increase in bank balance is basically on account of foreign remittances. The capital account and bank statement placed on assessment record during the assessment proceedings u/s 153A for AY 2012-13 reflects the total foreign remittances [brought during the year) of Rs 12,76,86,331/- [commensurate to their stand that 5.73% of HSBC foreign bank deposits of (late) Shri Ramniklal Mehta]. A part of those foreign remittances was utilized for payment of tax liability on the return income of AY 2006-07.

14. It is thus clear that estate of Mr RR mehta had been filling the return of income electronically, even after the demise of late RR Mehta, therefore the appeal against the AO ,order was required to be filled electronically, as per the bare reading of the Rule 45 read with section 249 of the ACT.

15. From the perusal of the assessment order and the submission made before us. It is abundantly clear that the appeal was filed in physical form , though was required to be filed in electronic form before the appellant authority. Needful was not done and sufficient reasons were given before us for not preferring the appeal in electronic form by the estate of Shri Ramniklal R. Mehta.

16. In our opinion, the Board framed the rules to achieve the ends of Justice and not to put impediments in the path of Justice. The assessee can not be asked to manage the portal of the revenue and forcibly file the appeal electronically. In our view,the assessee made sufficient and sincere efforts to file the appeal in electronic forms, albeit the assessee failed in his efforts for the reasons recorded in the order.In our considered opinion, the non filing of the electronic appeal was on account of the inaccessibility of the Income tax portal to the estate of Shri RamniklalR.Mehta and assessee was forced to file the appeal in physical form . The assessee had preferred the appeal in electronic form on 12/03/2021 against the same assessment order dated 28/12/2018. In our view the revenue can not take the benefit of non functioning/malfunctioning of its portal and deny the statutory right of the assessee. In any case the assessee can not be non suited for abrasion in the portal of the revenue . Therefore we deem it appropriate to set aside the orders passed by the CIT(A) with the following directions :-

- A. The CIT(A) is directed to decide the appeals filed by the assessee filled physically as well as electronically on merit.
- B. The Ld. CIT(A) shall grant the opportunity of hearing to the assessee and shall also permit the assessee to file any other documents as the assessee deem appropriate in support of his case.

C. The CIT(A) is directed to decide the appeal of assessee after affording the opportunity of hearing to the assessee in accordance with the rules framed for this purpose.

In the result all the appeals of the assessee are allowed for statistical purposes .

Order pronounced in the open court on 30 .11.2021

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Mumbai; Dated :. 30 .11.2021
Thirumalesh, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai