

आयकर अपीलिय अधिकरण  
मुंबई पीठ "जी"  
श्री विजय पाल राव, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

आअसं. 3225/मुं/2019 (नि.व.2016-17)  
ITA No. 3225/MUM/2019 (A.Y.2016-17)

Shri Shantilal S Jain, HUF M/s Sundeshwar Steel Industries (Prop. Shri Shantilal S. Jain HUF) 36/40, Room No.34, Hinglaj Bhavan Gulalwadi, Mumbai-400 004 PAN : AADPJ0338F	vs	The Income-tax Officer-19(3)(3) Matru Mandir, Room No.219 Tardeo Road, Mumbai-400 007
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	None
Department represented by	Shri Hoshang B Irani – (DR)

Date of hearing	31/03/2022
Date of pronouncement	04/04/2022

**ORDER**

Per Vijay Pal Rao (JM):

This appeal by the assessee is directed against the order dated 12/02/2019 of Commissioner of Income-tax (Appeals) for the assessment year 2009-10.

2. None has appeared on behalf of the assessee when this appeal was called for hearing. However, we note that the CIT(A) has dismissed the appeal

of the assessee in limine on technical ground of non filing of appeal electronically. Therefore, we propose to hear and dispose of this appeal exparte.

3. We have heard the Ld.DR who has relied upon the orders of authorities below and carefully perused the impugned orders of the Assessing Officer as well as the CIT(A). The re-assessment order was passed exparte under section 144 r.w.s. 147 of the I.T. Act, 1961 which was challenged before the CIT(A). The CIT(A) has dismissed the appeal of the assessee by treating the same as non est as under:-

*“The appellant has filed appeal manually on 12.04.2016. As per Rule 45 of I. T. Rules 1962, appeal shall be made in Form no. 35 electronically. The appeal of the appellant is in contravention of Rule 45 of I. T, Rule 1962. Show cause notice dated 01.02.2019 was issued to the appellant. There was no reply. Hence, the same is dismissed as non-est.”*

4. Thus, it is clear that the CIT(A) has dismissed the appeal on technical ground as the assessee has not filed the same electronically as per Rule 45 of the Income-tax Rule. It appears that only one notice was issued by the CIT(A) to the assessee and the status of the service of the same is also not mentioned in the impugned order. Therefore, the dismissal of the appeal on technical ground by the CIT(A) without giving an effective and sufficient opportunity to the assessee to rectify the mistake in filing the appeal is in contravention of principle of natural justice. Hence, in the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the CIT(A) and remand the matter back to the record of the CIT(A) for deciding the same afresh on merits after giving one more opportunity to the assessee to rectify the mistake for filing the appeal. The assessee is allowed one

more opportunity to file the appeal electronically within a period of two months from the date of receipt of this order.

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

Order pronounced in the open court on 04/042022

Sd/-  
(GAGAN GOYAL)

लेखा सदस्य/ACCOUNTANT MEMBER  
Mumbai, Dated: 29/03/2022

Pavanan

मुंबई/ Mumbai, दिनांक/Dated: /03/2022

Pavanan

**प्रतिलिपि अग्रेषित**Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**