

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA
BEFORE SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 569/Kol/2022
Assessment Year: 2013-14

Mridul Kotriwala 6, Burdwan Road Kolkata - 700027 PAN : AGDPK0126G	Vs	Income Tax Officer, Ward-29(1), Kolkata
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manoj Kataruka, Advocate
Revenue by :	Shri Vijay Kumar, Addl. CIT, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 25/10/2022
घोषणा की तारीख/**Date of Pronouncement** : 26/10/2022

आदेश/ORDER

PER SHRI MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 26/09/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2013-14.

2. At the outset, the Id. Counsel for the assessee submitted that the Id. CIT(A) dismissed the assessee's appeal on technical ground for not filing the appeal online. He further submitted that the assessee has filed the appeal in physical form in the prescribed form and attached all the necessary documents within the statutory time limit prescribed under the Act from the date of the order of the Assessing Officer, which is 10/03/2016 and the appeal before the Id. CIT(A) was instituted on 30/03/2016. However, since the appeal was not filed in accordance with Rule 45 of the Income Tax Rules, 1962 ("Rules") and also the assessee did not e-file the appeal by 15/06/2016, as per Circular No. 20/2016 issued by the Central Board of Direct Taxes, New Delhi in F.No.279/Misc./M-54/2016/ITJ, dated 26/05/2016, the paper appeal filed by the assessee was dismissed by the Id. CIT(A).

3. The Id. Counsel for the assessee further submitted that the assessee has later on e-filed the appeal on 02/09/2022 and that the case of the assessee is squarely covered by the decision of the Kolkata 'D' Bench of the ITAT in the case of *M/s. Todi Investors vs. ACIT in ITA No. 1540/Kol/2018, order dt. 04/03/2019* wherein under similar circumstances, the appeal of the assessee was allowed and directions were given to the Id. CIT(A) to hear and dispose of the appeal filed by the assessee through e-filing on merits after condoning the delay in filing of the same.

3.1. Per contra, the Id. D/R though supported the order of the Id. CIT(A), could not controvert the fact that the case of the assessee is supported by the decision of the Tribunal (*supra*).

4. I have heard rival contentions and perused the material available on record.

5. Through this appeal, the assessee has raised various grounds. Ground No.1, has been raised against the action of the Id. CIT(A) confirming the addition made by the Assessing Officer by rejecting the assessee's appeal on technical ground.

6. I notice that the assessee is an individual having filed his e-return on 26/09/2013 declaring total income at Rs.8,13,250/- for Assessment Year 2013-14. The case was selected for scrutiny and assessment u/s 143(3) of the Act was framed on 10/03/2016 assessing income at Rs.21,26,733/-. The assessee filed appeal in paper form before the Id. CIT(A) on 30/03/2016. However, since the assessee was required to e-file the appeal in accordance with Rule 45 of the Rules, effective from 01/03/2016 which was further extended to 15/06/2016 and since the assessee failed to e-file the appeal, the Id. CIT(A) dismissed the appeal of the assessee being an invalid appeal.

7. I find that similar issue came up for adjudication before this Tribunal in the case of *M/s. Todi Investors (supra)*, wherein also, the assessee failed to e-file the appeal and had filed the appeal manually and at a later stage the appeal was e-

filed. The Tribunal after considering the facts of the case and also applying the proposition of law laid down ITAT Mumbai Bench in the case of *All India Federation of Tax Practitioners vs. ITO* being ITA No. 7134/Mum/2017 order dt. 04/05/2018 had held as under:-

"2. The assessee in the present case is a partnership firm. In the assessment completed under [section 143\(3\)](#) vide an order dated 08.12.2015, the total income of the assessee was determined by the Assessing Officer at Rs.43,37,080/- as against the returned income of Rs.24,40,080/- after making certain additions to the total income of the assessee. Penalty proceedings under [section 271\(1\)\(c\)](#) were also initiated by the Assessing Officer in respect of the additions made to the total income of the assessee and since the explanation offered by the assessee in response to the show-cause notice issued during the course of the said proceedings was not found acceptable by the Assessing Officer, he imposed a penalty of Rs.5,86,176/- under [section 271\(1\)\(c\)](#) of the Act by treating the additions made to the total income of the assessee as its concealed income. The penalty imposed by the Assessing Officer under [section 271\(1\)\(c\)](#) was challenged by the assessee in the appeal filed before the ld. CIT(Appeals) and since the said appeal was filed by the assessee manually instead of the mandatory requirement of e-filing the same as per Rule 45 of the Income Tax Rules 1962 with effect from 1st March, 2016 as further extended till 15th June, 2016, the ld. CIT(Appeals) treated the appeal filed by the assessee manually as non-est and dismissed the same at the threshold. Aggrieved by the order of the ld. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

3. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the ld. Counsel for the assessee, a similar issue as involved in the present case was also involved in the case of *All India Federation of Tax Practitioners -vs.- ITO* and the Mumbai Bench of this Tribunal decided the same in favour of the assessee vide its order dated 04.05.2018 passed in ITA No. 7134/Mum/2017 by observing 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 'RaniKusumVrs. 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 do 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".

4. At the time of hearing before us, the ld. Counsel for the assessee has submitted that the assessee has also filed an appeal before the ld. CIT(Appeals) on 14.07.2018 against the order of Assessing Officer imposing the penalty under [section 271\(1\)\(c\)](#) through e-filing. Keeping in view this factual aspect and respectfully following the decision of the Coordinate Bench of this Tribunal in the case of All India Federation of Tax Practitioners

(supra), we direct the Id. CIT(Appeals) to hear and dispose of the said appeal filed by the assessee through e-filing on merit after condoning the delay in filing the same."

8. Respectfully following the ratio of decision laid down by the Tribunal in the case of *M/s. Todi Investors (supra)* which is squarely applicable on the issue raised in the instant appeal and also considering the fact that the assessee had filed its appeal manually in time and thereafter has e-filed the appeal before the Id. CIT(A) on 02/09/2022, I hereby direct the Id. CIT(A) to condone the delay in filing of the e-appeal and decide the issues on merits by way of passing a speaking order after giving reasonable opportunity of being heard to the assessee.

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

Order pronounced in the Court on 26th October, 2022 at Kolkata.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 26/10/2022

SC Sp/Pr

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata