

आयकर अपीलिय अधिकरण
मुंबई पीठ “एच” मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य, एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “H” BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आ.आ.सं. ६८६/मुंबई/२०२३ (नि.व. १९९३-९४)
ITA No.686/MUM/2023 (A.Y.1993-94)

Smt. Jyoti Harshad Mehta
(As legal heir to Late Shri Harshad S. Mehta)
32, Madhuli, Dr. Annie Besant Road,
Worli
Mumbai-400 018

PAN No. ABAPM1848F

..... अपीलार्थी / Appellant

बनाम Vs.

Deputy Commissioner of Income Tax, 4 (1)
Room No. 1921, Air India Building
Nariman Point
Mumbai-400 021

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा / Appellant by : Shri Vijay Mehta & Shri Dharmesh Shah
प्रतिवादी द्वारा / Respondent by : Shri Dr. P. Daniel, Special Counsel

सुनवाई की तिथि / Date of hearing : 10/05/2023
घोषणा की तिथि / Date of pronouncement : 10/05/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-52, Mumbai (hereinafter referred to as “the CIT(A)”) dated 09.01.2023, for the assessment year 1993-94.

2. Shri Vijay Mehta appearing on behalf of the assessee submitted that the CIT(A) has dismissed the appeal in limine, merely for the reason that the assessee has filed the appeal in physical mode and not in electronic form. The Ld. Authorised Representative (AR) submitted that the appeal was filed within the prescribed period of limitation. The assessee could not file appeal in electronic mode because of technical reasons. The Ld. AR explained that this appeal has been filed by the legal heir of Shri Harshad Shantilal Mehta deceased. The assessee had already written to the Assessing Officer (AO) for bringing on record legal heirs of Shri Harshad Shantilal Mehta. The AO has not been able to update the records of the deceased assessee. Since, the name of legal heir has not been updated by the AO in the records of the Department, the present assessee legal heir of Late Shri Harshad Shantilal Mehta was unable to file appeal electronically. Non filing of appeal in electronic mode was for the reasons beyond the control of assessee. The Ld. AR submitted that the Hon'ble Madras High Court in the case of CIT vs. Sri Vasavi Gold & Bullion (P.) Ltd., 278 Taxman 352 has held that where because of technical problems in e-filing of the appeal, the assessee can be given benefit of filing manual appeal.

3. Dr. P. Daniel representing the Department submitted that as per amended provisions, the assessee was required to file appeal electronically whereas, the assessee filed appeal manually. For non-compliance of the prescribed procedure in filing of appeal, the CIT(A) has rightly dismissed the appeal.

4. We have heard the submissions made by rival sides and have examined the impugned order. It is an undisputed fact that the assessee had filed appeal in

physical mode as against electronically mandated in Rule 45 of the Income Tax Rules, 1962. The assessee while filing appeal manually on 02.02.2017, vide letter dated 01.02.2017 had explained the reasons to the CIT(A) for filing appeal in physical mode. The assessee filed appeal in the capacity of a legal heir of the deceased Shri Harshad Shantilal Mehta. The assessee had already furnished the relevant documents before the AO for bringing on record legal heir of Shri Harshad Shantilal Mehta. This fact has not been disputed by the Department. Since, the records have not been updated in computer system by the Income Tax Department, the assessee could not file appeal electronically and was constrained to file appeal in physical mode. Filing of appeal electronically as prescribed under Rule 45 was beyond the control of assessee. Thus, the assessee was compelled to file appeal manually. Right of appeal is a statutory right provided by the Act to an aggrieved assessee. The statutory right of appeal cannot be usurped citing procedural defect. It is trite that rules of procedure are meant as hand made of justice to aid the attainment of justice in an orderly way. It is equally trite that where rules result in injustice, absurdity or travesty of its purpose, deviation can be made from the strict observance of such Rules. Dispensation of justice is of prime importance. In the present case, the delay in updating records in computer system is on the part of Department. The assessee cannot be penalised for inaction or delay in updating records by the Department. The Hon'ble Madras High Court in the case of CIT vs. Sri Vasavi Gold & Bullion (P.) Ltd. (supra) allowed manual filing of appeal before the CIT(A), where the assessee could not file appeal electronically on account of technical hindrances.



5. Thus, in the peculiar facts of the case, we deem it appropriate to restore the appeal of the assessee to the CIT(A) for fresh adjudication on merits, in accordance with law.

6. In the result, impugned order is set aside and appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on Wednesday the 10th day of May 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 10/05/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपी अग्रेषित of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai