

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 66/Rjt/2019  
Assessment Year: 2012-13**

Shri Ashwinkmar C. Zala M.I. Park, Nr. Commerce College, Surendranagar, Gujarat  PAN No: AAAPZ9922G  (Appellant)	Vs	The C.I.T(Appeals)-7, Ahmedabad  (Respondent)
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**Assessee Represented: None**  
**Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 03-07-2023  
Date of pronouncement : 05-07-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Appellate order dated 30.05.2017 passed by the Commissioner of Income Tax (Appeals)-7, Ahmedabad arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The only grievance of the assessee is that physical appeal filed by the assessee on 30.05.2017 was dismissed by the Commissioner of Income Tax (Appeals) on the ground that the appeal ought to have been filed online as per amended Rule 45 of the Income Tax Rules, 1962, mandating compulsory e-filing of appeal before Appellate Commissioner with effect from 01-03-2016, for all persons who are required to furnish their Return of Income electronically. Though the assessee vide its letter dated 13-05-2017 explained he already filed online appeal under Rule 45 on 01-05-2017 with Acknowledgement No. 766897990010507. Due to technical reason that his Aadhar was not able to match PAN data. There was technical delay in online filing and requested to condone the same. Though the Ld. Commissioner of Income Tax (Appeals) extracted the above letter of the assessee in this impugned order, but simply dismissed the appeal in limine.

3. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. Order is wrong ab intio, fact is that before order of dismissal of appeal physically (paper form) on 30-05-2017, afresh appeal was electronically filed on-line on 01-05-2017. Vide reference number 766897990010507.*

*2. Reply of show cause notice by CIT(Appeals)-7 dated 09-05-2017, Was answered on 13-05-2017 and that was acknowledged by her honors' office. This fact ignored in said judgment.*

*3. It is vague and incomplete judgment. Her honor does not mentioned any decision about electronically filed appeal wide ref no766897990010507, pending with her office. It is partial, ex-parte, irresponsible decision without giving any opportunity to represent fact.*

*4. It is partial, ex-parte, irresponsible decision without giving any opportunity to represent fact.*

*5. Misinterpreted rules for eligibility for filing appeals in paper form appellate is eligible to file an appeal in physical form as he is farmer and he never filed any assessments electronically before that judgment date*

*6. Respondent does not mentioned in judgment, any reasons rejection of grace requested under section 249(3) in our reply dated 13-05-2017, reasons to file electronically late for technical reason.*

*7. At the time of submission of my appeal (paper form) I inform to respondent personally that I don't have aadhar card so electronically submission would be delayed so I file physically in advance so Respondent may grant condone for delay submission for technical reason. She was admitted. But no such matter mentioned in her judgment order that why delay request not accepted.*

*8. Respondent knowingly ignored facts (studying the order passed by Tushar Parmar(assistant CIT Surendranagar), that it is wrong order by IT department. Actually assessment order is against firm ARJUN CERAMIC-THANGADH. I was proprietor of that firm but I sold that unit to Labhubhai Ukabhai Panara on date 09-08-2011. So as the provision of transfer property act. I may not be responsible after date 09-8- 2011. I never received any notice, correspondence, communication to my address, as I live at Surendranagar, after that date.*

*9. AS principle of natural justice Respondent should not close pending file electronically without giving opportunity by fresh show cause notice, as she rejected appeal in paper form not electronically filed appeal in judgment dated 30-05-2017, it is against provision of valid notice.*

4. None appeared on behalf of the assessee in spite of service of notices.

5. Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue fairly accepted that the matter be set aside back to the file of the Ld. CIT(A) to decide the case on merits.

6. Recording the above statement, we hereby set aside the impugned order passed by the Commissioner of Income Tax (Appeals)-7 with a direction to pass fresh order on merits, after

giving adequate opportunity to the assessee and decide the appeal.  
Thus the grounds raised by the assessee are hereby allowed.

7. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

Order pronounced in the open court on 05-07-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 05/07/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट