

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
AND  
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.147/M/2024  
Assessment Year: 2009-10**

<b>M/s. Fibre Texx,</b> 144, Behram Mahal, 2 <sup>nd</sup> Floor 534, Kalbadevi Road, Mumbai – 400 002 <b>PAN: AABFF5106D</b> (Appellant)	Vs.	<b>ACIT-18(1),</b> Piramal Chambers, Lower Parel, Mumbai – 400 020 (Respondent)
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**Present for:**

Assessee by : None  
Revenue by : Ms. Rajeshwari Menon, Sr. DR.

Date of Hearing : 02 . 05 . 2024  
Date of Pronouncement : 27.05. 2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the assessee against the order dated 15.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2009-10.

**2.** In the instant case, the assessment order was passed under 143(3) rws 147 of the Act on 23/03/2016 against which the assessee preferred first appeal in physical form within the limitation period as prescribed for filing the appeal in the Act i.e.

on 20-04-2016 before the Ld. Commissioner. Whereas the said appeal was required to be e-filed in accordance with the procedure enumerated in rules 45 & 46 of the IT Rules, 1962 as substituted by IT (3rd Amendment) Rules, 2016 w.e.f. 01.03.2016, whereby filing of appeal before the CIT(A) has been made mandatorily in electronic form (E-file). Hence the appeal file in physical form was dismissed by the Ld. Commissioner as invalid and non-est under Rule 45 of the Rules.

**3.** Thereafter the assessee has also filed the first appeal electronically before the Ld. Commissioner but with a delay of 47 days, however, the Ld. Commissioner dismissed the same on the ground that the appeal cannot be considered as a valid appeal as two appeals cannot be admitted on the same issue for the same assessment year. The assessee, being aggrieved, is in appeal before us.

**4.** Heard the parties and perused the material available on record. It is not the case here that the appeal filed in physical form by the assessee, has been dismissed by the Ld. Commissioner on merit and the Assessee is also precluded from filling the appropriate appeal in electronic form. It is a fact the Assessee's appeal previously filed in physical mode infact has been dismissed in limine being non-maintainable in physical form as claimed by the assessee. Hence on the aforesaid analyzation, we do not find any justification to sustain the decision of Ld. Commissioner in dismissing the appeal in limine being un-adjudicated. Therefore, for the just decision of the case and substantial justice, we are inclined to condone the delay, which accordingly is condoned and the case is remanded to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity to the assessee to substantiate its claim.

The assessee is also directed to comply with the notices and cooperate with the appellate proceedings before the Ld. Commissioner and file the relevant reply/submission/documents as would be essential/required for proper adjudication of the appeal of the assessee by the Ld. Commissioner. In case of further default, the assessee shall not be entitled for any leniency.

**5.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open court on 27.05.2024.**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.