

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 1614/MUM/2024
(Assessment Year : 2010-11)**

Paresh Vanitlal Shah 1402, Centre Point, 90 Ft Rd, Mulund East, Mumbai-400081	Vs.	ITO-Ward 29(2)(5)/NOW 41(2)(1) Kautilya Bhavan, Mumbai-400051
PAN/GIR No. AAEPS6162P		
(Appellant)	..	(Respondent)

Assessee by	Shri. Devendra Jain
Revenue by	Shri. H.M. Bhatt (SR.DR.)
Date of Hearing	20/06/2024
Date of Pronouncement	26/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 21.02.2024 passed in Appeal no. CIT(A)40, Mumbai-44/10151/2018-19 by the Ld. Commissioner of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2010-11, wherein learned

CIT(A) has dismissed assessee's appeal upon rejection of assessee's application for condonation of delay in filing the same.

2. At the very outset, learned representative for the appellant assessee has submitted that the appeal was physically filed before learned CIT(A) on 11.04.2016 against the order dated 23.03.2016 within 30 days as required u/s. 249(2) of the Act. Learned CIT(A) has dismissed the appeal merely on the delay in e-filing the same. Further, submitted to afford an opportunity of hearing to the assessee and direct learned CIT(A) to decide the matter afresh on merit.
3. Learned DR has supported the impugned order.
4. We have heard the parties and perused the material available on record. Learned CIT(A), in para 3 of impugned order stated as under:

“ 1. The appellant filed an appeal after a substantial delay. Rule 45 of the Income Tax Rules, 1962, mandates compulsory e-filing of appeals. before Commissioners of Income Tax (Appeals) with effect from 01.03.2016 in respect of persons who are required to furnish return of income electronically.

2. CBDT vide circular 20/2016 dated 26 May 2016 extended the time limit for filing of appeal upto 15.06.2016.

3. However, the appellant chose not to file the appeal within the stipulated time. Choosing not to file an e–appeal within the specified period, without sufficient cause, is a voluntary decision on the appellant's part.”

5. It appears that the assessee was required to e-file the appeal with effect from 01.03.2016 in accordance with aforesaid rule 45 of the Income Tax Rules 1962. First

appeal was dismissed by the First Appellate Authority solely upon rejection of assessee's prayer for condonation of delay in filing the same. The limitation period for filing an appeal before learned CIT(A) u/s. 249(2) of the Act is 30 days. However, section 249(3) of the Act empowers the first appellate authority to condone the delay if satisfied that appellant had sufficient cause for not presenting it within that period. Learned CIT(A) was, however not satisfied to condone the said delay of 898 days in e-filing the appeal even when the same was physically filed within the stipulated period on 11.04.2016.

6. It is well established principle of law that the substantial justice cannot be denied on technical aberrations. The impugned order seems to have been passed merely on the ground that the assessee failed to file the appeal electronically within the stipulated period as prescribed under the above referred rule. Hon'ble Supreme Court in *Sambhaji and Ors V Gangabai and Ors*, Civil Appeal no. 6731/2008 (arising out of SLP(C) No. 14562 of 2006) vide judgment dated 20.11.2008, has held that the object of prescribing procedure is to advance the cause of justice. In an adversarial justice system, no party should ordinarily be

denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extra ordinary situations in the ends of justice. Justice is the goal of jurisprudence. Procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not to be tyrant but a servant, not an obstruction but an aid to justice. A procedural prescription is the handmaid and not the mistress, lubricant, not a resistance in the administration of justice.

7. In the instant case, admittedly the first appeal was physically filed within 30 days i.e on 11.04.2016 against the assessment order dated 23.03.2016. The object of procedure prescribing the filing of the appeals electronically is to expedite the proceedings before the Income Tax Authorities and to advance the cause of justice. We accordingly hold that the delay has wrongly been refused to be condoned by learned CIT(A) merely on technicalities despite the fact that the first appeal was

physically filed within the stipulated period. We, accordingly condone the said delay in e-filing the first appeal before the first appellate authority.

8. In the result, the appeal is allowed. The impugned order dated 21.02.2024 is set aside. The delay in filing the first appeal before first appellant authority i.e learned CIT(A) stands condoned. We restore the matter back to the file of learned CIT(A) for passing order afresh on merit in accordance with law. Needless to say that the first appellant authority shall ensure the substantial compliance of the principles of natural justice.

Order pronounced on 26.06.2024

Sd/- (BR BASKARAN)	Sd/- (SUNIL KUMAR SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai; Dated 26/06/2024

Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai