

IN THE INCOME TAX APPELLATE TRIBUNAL  
SURAT BENCH, SURAT  
(HYBRID HEARING)

**Before: Shri T.R. Senthil Kumar, Judicial Member And  
Shri Bijayananda Pruseth, Accountant Member**

**ITA No: 120 & 121/SRT/2025  
Asst. Years: 2011-12 & 2012-13**

Hitesh Dahyabhai Patel Nr. Hanuman Temple, Kanbiwad, Amdhara, Chikhli, Navsari, Gujarat-396521  <b>PAN: AOLPP7675M (Appellant)</b>	Vs	Income Tax Officer (Int. Tax.), Surat  <b>(Respondent)</b>
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**Assessee Represented: Shri Rasesh Shah, CA  
Revenue Represented: Ms. Neerja Sharma, Sr.D.R.**

Date of hearing : 06-05-2025  
Date of pronouncement : 09-05-2025

**आदेश/ORDER**

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

These appeals are filed by the Assessee as against two separate appellate orders both dated 04.12.2024 passed by the Commissioner of Income Tax (Appeals)-13, Ahmedabad arising out of the reassessment orders passed under section 147 r.w.s. 144 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2011-12 & 2012-13.

2. Ld. Counsel Shri Rasesh Shah appearing for the assessee submitted that the appeals were dismissed by Ld. CIT(A) since the assessee failed to electronically file the appeal in accordance with the provisions of Rule 45(2)(a)/(b). Though the Ld. CIT(A) claimed that eight opportunities of hearing given to the assessee from 01-11-2021 to 25-11-2024 through email ID, but the assessee in statutory appeal Form No. 35 clearly mentioned that No email communication to him. Without considering the same, Ld. CIT(A) dismissed the appeals as non-est.

3. In similar circumstances, the ITAT Mumbai Bench in the case of All India Federation of Tax Practitioners -Vs- ITO, Mumbai directed the assessee to file electronically within 10 days from the date of receipt of the order and the e-filing of the appeal shall stand condoned. Ld. CIT(A) is further directed to consider the appeal and decide the case on merits by a speaking order. This decision has followed by the ITAT Jaipur Bench in the case of Shri Mahesh Agarwal vs. ACIT, therefore requested similar directions be passed in the assessee's case.

4. Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Ld. CIT(A).

5. We have considered the rival submissions and perused the materials available on record. These appeals are manually filed by the assessee on 11-02-2019 which is contravention to the procedure for compulsory filing of appeals electronically as per the IT (Amdt.) Rules 2016, w.e.f. 01-03-2016. Though the Ld. CIT(A) given eight hearing opportunities through email to the assessee,

however in Form No. 35 filed by the assessee categorically mentioned that not to send notices by email. Thus assessee was unnoticed the so called hearing notices issued by Ld. CIT(A).

6. Further Co-ordinate Bench of Mumbai ITAT in the case of All India Federation of Tax Practitioners directed the assessee to file the appeals electronically within 10 days of the receipt of the order and direct the Ld. CIT(A) to dispose of the appeal on merits by passing a speaking order. This decision is followed by ITAT Jaipur Bench in the case of Shri Mahesh Agarawal in ITA No. 4/JP/2023 dated 28-03-2023 by observing as follows:

2.4 We have heard both the parties and perused the materials available on record. The crux of the issue is that the assessee has filed the appeal manually but simultaneously not filed the appeal electronically. Hence, ld. CIT(A) treated the manual appeal filed by the assessee as non est and dismissed the same. The Bench noted that similar type of issue was considered by the ITAT Mumbai Bench in the case of All India Federation of Tax Practitioners vs ITO (E)-1)2\_, Mumbai in ITA No. 7134/Mum/2017 vide order dated 4-5-2018 wherein the Bench has restored the matter back to the file of ld. CIT(A) by holding 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 Income Tax Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1-3-2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e. Income Tax Act, 1961. As per the facts of the present case, the assessment in the above case was completed under section 143(3) of the Income Tax Act 1961. However the assessee has filed appeal before learned Commissioner (Appeals) in paper form as prescribed under the provisions of Income Tax Act 1961 within the prescribed period of limitation. But the same was dismissed by learned Commissioner (Appeals) by holding that assessee had not filed appeal through electronic form, which is mandatory as per Income Tax Rules 1962.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of 'State of Punjab v. Shyamalal Murari & Ors. 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 judgment reported as AIR 2005 (SC) 3304 in the case of 'Rani Kusum v. 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 judgment 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 v. ITO had restored the matter to the file of learned Commissioner (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 learned Commissioner (Appeals), therefore in that eventuality the learned Commissioner (Appeals) 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 learned Commissioner (Appeals) & 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. Learned Commissioner (Appeals) 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.

7. In the net result the appeal filed by the assessee is allowed.”

In view of the above decision of ITAT Mumbai Bench in the case of All India Federation of Tax Practitioners vs ITO (supra), assessee is directed to file the appeal electronically before the Id. CIT(A) who will pass the afresh speaking order on merit. Thus the appeal of the assessee is allowed for statistical purposes.

7. In view of the Co-ordinate Benches decision on the similar issues, we direct the assessee to upload the appeals electronically within 10 days of the receipt of copy of this order and direct Ld. CIT(A) to accept the appeals and pass orders on merits by giving proper opportunity of hearing to the assessee.

8. In the result, the appeals filed the Assessee are allowed for statistical purpose.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 09 -05-2025

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

**Ahmedabad : Dated 09/05/2025**

**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.

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

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
सूरत