

आयकर अपीलीय अधिकरण “F” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI C.N PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1936/Mum/2018

(निर्धारण वर्ष / Assessment Year : 2013-14)

Mr. Umesh A Mishra B/401/402, Raheja Sherwood, Behind Hub Mall Western Express Highway Goregaon, East, Mumbai-400063	बनाम/ v.	ITO 10(3)(3), 2 nd Floor, Aayakar Bhavan, Mumbai-400020
स्थायी लेखा सं./PAN: AAGPM0190F		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Neha Paranjape	
Revenue by:	Shri. D.G. Pansari (DR)	

सुनवाई की तारीख /**Date of Hearing** : 19.03.2019

घोषणा की तारीख /**Date of Pronouncement** : 19.03.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by assessee, being ITA No. 1936/Mum/2018, is directed against appellate order dated 29.12.2017 in appeal no. CIT(A)-17/IT-54/16-17, passed by learned Commissioner of Income Tax (Appeals)-17, Mumbai (hereinafter called “the CIT(A)”), for assessment year 2013-14, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 22.02.2016 passed by learned Assessing Officer (hereinafter called “the AO”) u/s 143(3) of the Income-tax Act, 1961 (hereinafter called “the Act”) for AY 2013-14.

2. The grounds of appeal raised by assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“(1) On The Facts and Circumstances of The Case, The Hon'ble Commissioner of Income Tax (Appeals) has erred in Law, in Confirming the Addition made under sec 68 of cash Income of Agricultural land of Rs. 15,40,500/- to the assessee's Income which is most unjustified and arbitrary.

(2) On the Facts and Circumstances of the case, the Hon'ble Commissioner of Income Tax (Appeals)-17 Confirming the Addition on Account of house Property of Rs. 9,72,701/- which is most unjustified and arbitrary.

(3) On the Facts and Circumstances of the Case. The Commissioner of Income Tax (Appeals)-17, Mumbai has erred in law in Confirming the initiation of Penalty Proceedings under Section 271(1)(C) of the Income Tax 1961.

4) On the Facts and Circumstances of case, The Commissioner of Income Tax (Appeals) has erred in law in Confirming the Charge Interest under Section 234A, 234B and 234C of the Income Tax Act 1961, Which is most Arbitrary.

(5) The Appellant, Craves to Add, Delete Alter, addition to the above Grounds of Appeal.”

2.2. The assessee has raised additional grounds of appeal before the tribunal which read as under:-

“ 1. The CIT (A) erred in not admitting the manual appeal filed by the Assessee and dismissing the same in limine without appreciating the facts and circumstances of the case. Thus, we request the Hon'ble Bench to send the matter back to the CIT(A) with an appropriate direction.

2.3. Heard both the parties as to admission of this additional ground. We have observed that this additional ground raised by the assessee is a legal ground which goes to the root of the matter and does not require appreciation of new facts as all the facts are available on record and hence keeping in view decision of Hon'ble Supreme Court in the case of National Thermal Power Company Limited v. CIT (1998) 229 ITR 383(SC) as well decision of Full Bench of Hon'ble

Bombay High Court in the case of Ahmedabad Electricity Company Limited v. CIT reported in (1993) 199 ITR 351(Bom.) , this additional ground stand admitted . We order accordingly.

3. The brief facts of the case are that the assessee is an individual having income from salary, LIC commission and income from other sources including agriculture income, interest income etc.. The assessee filed his return of income with Revenue on 02.12.2013 which was processed u/s. 143(1) of the 1961 Act. Later , the case of the assessee was selected for scrutiny by Revenue and the assessment was framed by the AO u/s. 143(3) of the 1961 Act, vide assessment order dated 22.02.2016 wherein income of the assessee was assessed at Rs. 50,47,050/- as against returned income of Rs. 34,09,725/-.

4. Aggrieved by an assessment framed by the AO vide assessment order dated 22.02.2016 passed u/s 143(3) of the 1961 Act, the assessee filed first appeal with Ld. CIT(A) on 12.04.2016 in Form No. 35 by manually filing the same instead of e-filing of the said appeal as was mandated by Rule 45 of the Income-tax Rules, 1962. This new system of e-filing of appeals before learned CIT(A) was introduced by department w.e.f. 01.03.2016 . It is pertinent to mention that CBDT had prescribed mandatory e-filing of appeal for specified category of the assessee/appellant vide notification no. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL)], dated 01.03.2016). Thus, the assessee was required to e-file its appeal with learned CIT(A) while the said appeal was manually filed by the assessee on 12.04.2016. The CBDT extended the period for filing the appeal electronically before learned CIT(A) till 15th June, 2016 , vide circular no. 20/2016 dated 26.05.2016. The assessee did not e-file its appeal before learned CIT(A) even within the aforesaid extended period. It is admitted position that the assessee filed its appeal before the Ld. CIT(A) within time as provided u/s. 249(2) of the 1961 Act albeit the appeal was filed manually instead of filing the same electronically as was mandated vide Rule 45 of the 1962 rules. The Ld. CIT(A) dismissed the

appeal of the assessee on this short ground as the assessee had filed the appeal manually instead of e-filing the same, vide appellate order dated 29.12.2017 passed by learned CIT(A). The learned CIT(A) did not dispose of the issues raised by the assessee in its appeal on merits but on short ground of not filing of appeal electronically with learned CIT(A) as was mandated by Rule 45 of the 1962 Rules, the appeal of the assessee was dismissed.

5. The assessee is aggrieved by an appellate order dated 29.12.2017 passed by learned CIT(A) and has filed an appeal with the tribunal . At the outset learned counsel for the assessee submitted that the appeal was filed by the assessee before learned CIT(A) on 12.04.2016 , while e-filing of an appeal before Ld. CIT(A) was newly introduced w.e.f. 01.03.2016 and the assessee was not aware of the new changed procedure of filing of an appeal with learned CIT(A). Prayers are made by learned counsel for the assessee before us that the matter may be restored to the file of Ld. CIT(A) and direction may be issued to learned CIT(A) to consider all the issues arising in the appeal of the assessee on merits. The Ld. DR fairly agreed that matter can be restored to the file of the Ld. CIT(A) for deciding the issues on merits.

6. We have considered rival contentions and perused the material on record . We have observed that the assessee is an individual having income from salary, LIC commission and income from other sources including agriculture income, interest income etc.. We have observed that the assessee filed his return of income on 02.12.2013 which was processed u/s. 143(1) of the 1961 Act. Later , the case of the assessee was selected for scrutiny wherein assessment was framed by the AO u/s. 143(3) of the 1961 Act, vide assessment order dated 22.02.2016 wherein income of the assessee was assessed at Rs. 50,47,050/- as against returned income of Rs. 34,09,725/-.

6.2. Aggrieved by an assessment framed by the AO vide assessment order dated 22.02.2016 passed u/s 143(3) of the 1961 Act, the assessee filed first appeal with Ld. CIT(A) on 12.04.2016 in Form No. 35 by manually filing the appeal before Ld. CIT(A) instead of e-filing of the said appeal as was mandated by Rule 45 of the 1962 Rules , which system of e-filing of appeals before learned CIT(A) was introduced by department w.e.f. 01.03.2016 . It is pertinent to mention that CBDT had prescribed mandatory e-filing of appeal for specified category of the assessee/appellant vide notification no. SO 637(E) [No. 11/2016 (F. No. 149/150/2015-TPL)], dated 01.03.2016). Thus, the assessee was required to e-file its appeal with learned CIT(A) while the said appeal was manually filed by the assessee on 12.04.2016. The CBDT extended the period for filing the appeal electronically before learned CIT(A) till 15th June, 2016 , vide circular no. 20/2016 dated 26.05.2016. The assessee did not e-file his appeal before learned CIT(A) even within the aforesaid extended period. It is admitted position that the assessee filed its appeal before the Ld. CIT(A) within time as provided u/s. 249(2) of the 1961 Act albeit the appeal was filed manually instead of filing the same electronically. The Ld. CIT(A) dismissed the appeal of the assessee on this short ground as the assessee had filed the appeal manually instead of e-filing the same, vide appellate order dated 29.12.2017 passed by learned CIT(A). The learned CIT(A) did not adjudicate issues raised by the assessee in its appeal before learned CIT(A) on merits.

6.3. We have observed that that newly introduced system of e-filing of appeals before learned CIT(A) was introduced w.e.f. 01.03.2016 vide Rule 45 of the 1962 Rules while assessee filed his appeal with Ld. CIT(A) on 12.04.2016. Thus it can be seen that it was an initial period of introduction of new system of filing of appeal before learned CIT(A) electronically. The assessee has claimed that he was not aware of new system of e-filing of appeals before learned CIT(A) and hence he could not e-File his appeal with the Ld. CIT(A) . However, the assessee filed

an appeal with learned CIT(A) on 12.04.2016 within time prescribed u/s 249(2) but the same was filed manually. The appeal was dismissed by Ld. CIT(A) on this short ground only without adjudicating issues on merits. In our considered view , there is no quarrel that the tax-payers are bound to follow procedures prescribed by authorities in fulfilling their obligations under the 1961 Act read with 1962 Rules otherwise there will be breakdown of Rule of Law. It is well settled that Rule of Law is engrained in basic structure of our constitution. But at the same time procedures are meant to advance justice and not to stifle the same. The new system of e-filing of appeals before learned CIT(A) were introduced by Revenue only wef 01.03.2016 and the assessee filed his appeal before learned CIT(A) on 12.04.2016 manually but the said appeal was filed within time limit prescribed u/s 249(2) of the 1961 Act. The CBDT extended deadline for e-filing of appeal before learned CIT(A) to 15.06.2016 , vide circular 20 of 2016 dated 26.05.2016. The assessee still did not e-filed its appeal before learned CIT(A). It is claimed that the assessee was not aware of the amended procedure for e-filing of appeals. The learned CIT(A) dismissed assessee's appeal on this short ground of not filing of appeal electronically . The learned CIT(A) did not decide any issue raised by the assessee in his appeals on merits. Under these facts and circumstances of the case , we are of the considered view that liberal approach is required to be taken to advance justice as the procedure are handmade to advance justice. When technicalities are pitted against justice, the courts will lean towards advancement of justice. It could not be shown by Revenue that the assessee acted in defiance of law deliberately . Thus, we are setting aside all the issue's arising in this appeal to the file of the Ld. CIT(A) to adjudicate all the issue's raised by assessee on merits in accordance with law. The assessee is hereby directed as well given liberty to e-file its appeal before the Ld. CIT(A) within 10 days of receipt of this order . The Ld. CIT(A) is directed to admit and adjudicate the issues raised by the assessee in its appeal on merits in accordance with law. Thus, with these

directions , we are restoring the matter back to the file of Ld. CIT(A) for re-adjudication of all the issues as are arising in appeal of the assessee on merits in accordance with law after providing opportunity of heard to the assessee. The evidences/explanations filed by the assessee shall be admitted by learned CIT(A) and shall be adjudicated in accordance with law on merits . The appeal of the assessee is allowed for statistical purposes. We order accordingly.

6.4 We have noted that Mumbai-tribunal in the case of All India Federation of Tax Practitioners v. ITO(E)-1(2),Mumbai in ITA no. 7134/Mum/2017 vide order dated 04.05.2018 has restored the matter back to the file of learned CIT(A) , by holding as under:-

“The present Appeal has been filed by the assessee against the order of Commissioner of Income Tax (Appeals)-1, Mumbai, dated 15.09.17 for A.Y. 2013-14.

2. As per the facts of the present case, the assessee is a trust registered with DIT€, Mumbai u/s 12A and with Charity Commissioner, Mumbai. The assessee filed its return of income on 29.09.11 alongwith the income and expenditure account, balance sheet and audit report in form 10B declaring total income at Rs. 1,81,777/-. Thereafter, assessment for AY 2013-14 was completed by order u/s 143(3) of the I.T. Act on 17.02.16 at taxable income of Rs. 14,22,664/-.

Aggrieved by the order of AO, the assessee preferred appeal before Ld. CIT(A) and the Ld. CIT(A) noticed that rule 45 of I.T. Rules 1962 mandating compulsory E-filing of appeals before CIT(A) with effect from 1st March 2016, therefore Ld. CIT(A) dismissed the appeal in limini by holding that mandatory requirement of E-filing of appeal have not been fulfilled by the assessee. Therefore the appeal filed manually was not treated as valid appeal and hence the same was dismissed.

Aggrieved by the order of Ld. CIT(A), the assessee has preferred the present appeal before us.

3. Now before us Ld. AR has challenged the order of Ld. CIT(A) in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically.

4. Ld. AR reiterated the same arguments as were raised before Ld. CIT(A) and submitted even though the appeal was filed in paper form and under the relevant provisions of I.T. Act 1961, but the Ld. CIT(A) has erred in not allowing hearing of appeal filed by the assessee merely on the basis of alleged default of not having filed electronically. Ld. AR further submitted that Ld. CIT(A) ought to have taken into account that the alleged compliance defaults were of a technical nature and being introduced for the

first time in the statute book ought to have considered legally and heard the appeal on merits. It was further submitted that Ld. CIT(A) has erred in denying an opportunity of appeal to deserving appellant and thus resulted in denial of opportunity of Justice in the deserving case.

5. On the other hand Ld. DR appearing on behalf of the Department supported the orders passed by the revenue authorities.

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 I.T. Rules 1962, mandating compulsory e-filing of appeals before appellate Commissioner with effect from 1st March 2016. We noticed that in this respect, there is no corresponding amendment in any of the provisions of the substantive law i.e. I.T. Act, 1961.

As per the facts of the present case, the assessment in the above case was completed u/s 143(3) of the I.T. Act 1961. However the assessee has filed appeal before Ld. CIT(A) in paper form as prescribed under the provisions of I.T. Act 1961 within the prescribed period of limitation. But the same was dismissed by Ld. CIT(A) by holding that assessee had not filed appeal through electronic form, which is mandatory as per I.T. Rules 1962.

After having considered the entire factual position, we find that Hon'ble Supreme Court in the case of 'State of Punjab Vs. Shyamalal Murari and others 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 judgement reported as AIR 2005 (SC) 3304 in the case of 'RaniKusum Vrs. 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 judgement 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 Vrs. ITO had restored the matter to the file of Ld. CIT(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 Ld. CIT(A), therefore in that eventuality the Ld. CIT(A) 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 Ld. CIT(A) & 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. Ld. CIT(A) 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."

6.5. We have also noted that the Mumbai-tribunal in the case of M/s. Asterix Reinforced Ltd., (formerly known as Bombay Highpolymer Chemical Products Ltd. and Orson Petrochemical P. Ltd.,) in ITA no. 426/Mum/2018 vide order dated 16.05.2018 has restored the matter back to the file of learned CIT(A) , by holding as under:-

" 6. We have heard both the parties and perused the materials available on record. It is an undisputed fact that the CBDT has mandated filing of appeal in electronic form after a certain date by issuing notification vide Notification No. SO 637(E) [No.11/2016 (F. No.149/150/2015-TPL)] dated 01.03.16 as per which the assessee is required to file form No.35 electronically. It is also an admitted fact that the CBDT has extended such due date of filing of appeal in electronic mode up to 15.06.16 considering the hardships/technical glitches in filing the appeal electronically. Admittedly, the assessee has filed its appeal in paper form on 29.04.16. The assessee claims that it is unaware of the notification issued by the CBDT for filing appeals in electronic format, therefore, it has filed its appeal in manual form on 29.04.16. The assessee further claims that during transition period the provisions of notification should not be applied strictly.

7. Having heard both the sides, we find merits in the arguments of the assessee for the reason that during transition period the provisions of any notification or circulars mandating the assesseees to follow certain instructions should not be strictly applied. We further noticed that the assessee has filed its appeal in manual form and such appeal has been filed

within the prescribed time under the Act. Therefore, we are of the considered view that merely because the assessee has not filed the appeal in electronic form, the assessee's appeal cannot be dismissed on technical grounds that too during transition period. We, further, noticed that the Hon'ble Supreme Court and various High Courts have already categorically stated that when technicalities and substantial justice is pitted against each other, the substantial justice deserves to be prevailed over technicalities. Therefore, we are of the considered view that the Ld. CIT(A) was erred in dismissing the appeal filed by the assessee as not maintainable, hence, we set aside the issue to the file of the Ld. CIT(A) and direct him to admit the appeal filed by the assessee by directing the assessee to file its appeal in electronic format and also to condone delay in filing such appeal in electronic format. We also direct the Ld. CIT(A) to decide the issues on merits."

7. In the result, appeal filed by the assessee in ITA no. 1936/Mum/2018 for AY 2013-14 is allowed for statistical purposes.

Order pronounced in the open court on 19.03.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 19.03.2019 को की गई

Sd/-

(C.N PRASAD)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 19.03.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI