**IN THE INCOME TAX APPELLATE TRIBUNAL**
**MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 75/MUM/2019**
**Assessment Year: 2013-14**

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| Mr. Thanwardas Lalchand Motwani,<br>M/s K.L. Traders, 12 Klin Road, Lamington Road,<br>Mumbai - 400007<br>PAN: AAEPM1907E | **Vs.** | The ITO 19 (3)(5),<br>Room No. ----- Aaykar Bhavan,<br>Maharshi Karve Marg,<br>Mumbai - 400020 |
| **(Appellant)** | | **(Respondent)** |

Assessee by : None
Revenue by : Shri Amit Pratap Singh (DR)

Date of Hearing: 03/02/2020
Date of Pronouncement: 21/02/2020

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 13.12.2018 passed by the Commissioner of Income Tax (Appeals)-30 (for short 'the CIT(A), Mumbai for the assessment year 2013-14, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1. *"The learned Commissioner of income tax (Appeals) erred in dismissing the appeal filed by the assessee on the ground that the same is not filed electronically.*
2. *Without prejudice to above, the learned Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had subsequently, on 26.11.2018, also filed appeal electronically which is before 13.12.2018, the date of order dismissing appeal, and the learned Commissioner of Income Tax (Appeals)*

*ought to have condoned delay in filing of appeal electronically and decided the appeal on merits.*

3. *The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance of claim u/s 54.*
4. *The appellant prays that:*
   - *i) Order of the Commissioner of Income Tax (Appeals) may be set aside and he may be directed to hear and dispose of the appeal on merits.*
   - *ii) Claim for exemption u/s 54 may be allowed.*
   - *iii) Recovery of demand in dispute may be directed to be stayed till hearing and disposal of the appeal.*
   - *iv) Appeal may be taken up on hearing on priority basis,*
   - *v) Any other relief your Honours may deem fit."*

3. This appeal was fixed for hearing on 03.02.2020. However, on the said date when the case was called out for hearing, none appeared on behalf of the assessee. Keeping in view, the issue involved in the appeal, we decided to dispose of this appeal on the basis of the material on record after hearing the Ld. Departmental Representative (DR).

4. Before us, the Ld. DR submitted that since the assessee had manually filed the appeal before the Ld. CIT (A), the Ld. CIT (A) issued show cause notice to the appellant/assessee and since the Ld. CIT(A) did not receive any reply/response from assessee, the Ld.CIT (A) has rightly dismissed the appeal filed by the assessee.

5. We have carefully perused the material on record. The Ld. CIT (A) has dismissed the appeal filed by the assessee holding as under:-

> *"The appellant has filed appeal manually on 22.04.2016. As per rule 45 of I.T. Rules, 1962 appeal shall be made in Form No. 35 electronically. The appeal of the appellant is in contravention of Rule 45 of I.T. Rule, 1962. The show cause notice dated 13.11.2018 was issued to the appellant. There was no reply. Hence, the same is dismissed as non-est."*

6. The Ld. CIT (A) has not mentioned in the order that the show cause notice dated 13.11.2018 was served upon the appellant/assessee. In the case

of *Prakash M. Jain vs. ITO ITA No. 2264/Mum/2018, AY 2010-11*, the coordinate Bench has dealt with the identical issue. In the said case, the assessee had manually filed the appeal before the CIT (A), which was within the limitation period. Subsequently, the assessee also filed the appeal electronically in terms of the circular of the Central Board of Direct Taxes (CBDT) which was beyond limitation period. The Ld. CIT (A) dismissed the appeal of the assessee on the ground that the appeal filed by the assessee is barred by law of limitation. The assessee challenged the impugned order before the Tribunal. The coordinate Bench allowed the appeal of the assessee holding as under:-

> *"4. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We noticed that the CIT (A) did not decide the case on merits. The assessee filed the appeal manually before the CIT (A) 30 on 18.04.2016 which was well-in-time. However, the assessee has filed the appeal electronically on 14.07.2016 which was delayed by one month. The CIT (A) has dismissed the appeal on account of filing the appeal delayed electronically by one month i.e. on 14.07.2016. The CIT (A) did not condone the delay. On appraisal of the record, we noticed that in fact the assessee has filed the appeal manually on 18.04.2016 which was well in time. The delay of filing the appeal electronically is not so much delay specifically in the said circumstances when the case is liable to be decided on merits. The assessee has challenged the addition of Rs. 7,57,199/- on account suspicious purchase. The matter of controversy is required to be adjudicate on merits, therefore, in the interest of justice we condone the delay and restored the matter before the CIT (A) to decide the matter afresh by giving an opportunity of being heard to the assessee in accordance with law. Accordingly, the appeal filed by the assessee is hereby allowed for statistical purpose.*
> *In the result, the appeal filed by the assessee is hereby ordered to be allowed for statistical purposes."*

7. Since, the coordinate Bench has dealt with the similar issues in the case of *Prakash M. Jain* (supra) and restored the appeal to the Ld. CIT (A) for

deciding the same on merits and since the issues involved in the present case are similar, we respectfully following the decision of the coordinate Bench, condone the delay if any in filing appeal electronically and restore the file to the Ld. CIT (A) for deciding the appeal afresh on merits after affording a reasonable opportunity of being heard to the assessee. However, we direct the assessee to appear before the Ld. CIT (A) as and when called by the Ld. CIT(A) and not to seek adjournments on frivolous grounds.

In the result, appeal filed by the assessee for assessment year 2013-2014 is allowed for statistical purposes.

Order pronounced in the open court on 21st February, 2020.

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| *Sd/-* | *Sd/-* |
| (RAJESH KUMAR) | (RAM LAL NEGI) |
| ACCOUNTANT MEMBER | JUDICIAL MEMBER |

मुंबई Mumbai; दिनांक Dated: 21/02/2020

*Alindra, PS*

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/** BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)
**आयकर अपीलीय अधिकरण,** मुंबई **/ ITAT, Mumbai**