

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

**BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 1773/MUM/2017  
Assessment Year: 2007-08**

M/s Shaily Engineering Plastics Ltd., 51, Dariyastan Street, Vadgadi, Mumbai - 400003 PAN: AACCA6600R	<b>Vs.</b>	The Dy. Commissioner of Income Tax 7(2)-1, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : None

Revenue by : Bharti Singh (DR)

Date of Hearing: 18/12/2019  
Date of Pronouncement: 30/12/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the assessee against the order dated 26.11.2015 passed by the Commissioner of Income Tax (Appeals)-14 (for short 'the CIT(A), Mumbai, for the assessment year 2007-08, whereby the Ld. CIT(A) has dismissed the appeal filed by the assessee against the order passed by the AO u/s 154 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:-

*"The assessing officer has not given credit of surcharge, education cess and higher and secondary education cess paid on minimum alternate tax in earlier years while computing tax liability of AY 2007-08 under normal provisions of the Income Tax Act, 1961.*

*Your Appellant submits that same is not justified and therefore be deleted."*

3. This case was fixed for final hearing on 18.12.2019. However, on the said date when the case was called out for hearing, none appeared on behalf of the assessee. We notice that this case was adjourned on 26.09.2019, 15.07.2019, 02.05.2019 and 12.12.2018 at the request of the assessee. Since, the assessee did not appear despite knowledge of date of hearing, we decided to dispose of the present appeal on the basis of material available on record after hearing the departmental representative (DR). Hence, we allowed the Ld. DR to argue the case on behalf of the department.

4. Before us, the Ld. Departmental Representative (DR) supporting the order passed by the Ld. CIT (A) submitted that since there was a delay of 46 days in filing appeal against the order passed u/s 154, the Ld. CIT (A) has rightly dismissed the appeal filed by the assessee. Therefore, there is no merit in the present appeal.

5. We have perused the impugned order passed by the Ld. CIT (A). The Ld. CIT (A) has dismissed the appeal of the assessee on the ground that there is a delay of 46 days in filing the appeal. The assessee filed the application for condonation of delay contents of which are as under:-

*“We are in the process of filing an appeal against the above order. We submit that we had received the order passed u/s 154 on 04/12/2012 raising the demand of Rs. 2,46,370/-. We understand that if we were required to file an appeal against the above order, we should have filed it within 30 days of receipt of the order. However, the registered office of the company is situated in Baroda and plant is situated at Rania, the directors of the company are no available in Mumbai. Moreover, the directors of the company were travelling during the last month and hence the process of filing the appeal got delayed. Considering the above reason, as sufficient cause for delay in filing the appeal, we request you to kindly consider the delay and accept the appeal”*

6. The assessee has challenged the impugned order on the ground that since the Assessing Officer had not given credit of surcharge, education cess paid on minimum alternate tax in early years while computing the tax liability pertaining to the AY 2007-08 under the normal provisions of the Act, the Ld.

CIT (A) ought to have allowed the appeal of the assessee. We notice that the Ld. CIT (A) has dismissed the appeal of the assessee on the point of limitation holding that the reasons for delay in filing appeal explained by the assessee are not sufficient to condone the delay. This expression sufficient cause has fallen for consideration before the Hon'ble High Courts as well as before the Hon'ble Supreme Court, and the Hon'ble Courts are unanimous in observing that whenever such issue comes for consideration before adjudicating authority, it should be considered with justice oriented approach. In the case of *Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353* The Hon'ble Supreme Court has held that When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

7. In our considered view, the reason stated by the assessee before the Ld. CIT (A) appears to be sufficient for holding that the assessee could not file the appeal before the Ld CIT(A) within limitation period due to the circumstances beyond its control. Hence, in the light of the law laid down by the Hon'ble Supreme Court in the case of *the Collector Land Acquisition vs. Mst. Katiji & Others* (supra), we deem it proper to condone the delay and send the appeal back to the Ld. CIT (A) for deciding the same afresh. Accordingly, we set aside the impugned order, condone the delay and remit the file back to the Ld. CIT (A) for deciding the appeal afresh on merits after affording a reasonable opportunity of being heard to the assessee.

In the result, appeal filed by the assessee for assessment year 2007-2008 is allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup> December, 2019.

Sd/-  
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 30/12/2019

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**