

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.405/SRT/2018

(निर्धारणवर्ष / Assessment Year: (2012-13))

(Virtual Court Hearing)

M/s.Rajesh Filament Pvt. Ltd., 218, Jeevandeep, Ring Road, Surat – 395001.	V s.	The Asst. Commissioner of Income Tax, Circle-2(1)(1), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCR 1294 F		
(Assessee)		(Respondent)

Assessee by : Shri Vinay Doshi - CA

Respondent by : Ms. Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of Hearing : 04/06/2021

घोषणाकीतारीख/Date of Pronouncement: 04/06/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the Assessee pertaining to A.Y. 2012-13 is directed against the order passed by the Id.Commissioner of Income Tax(Appeals)-2, which in turn arises out of an assessment order passed by the Id.Assessing Officer under section 143(3) of the Income Tax Act, 1961 [hereinafter referred as ‘the Act’] dated 27.03.2015.

2. At the outset, the Ld.Counsel for the assessee submits that the appeal filed by the assessee is barred by limitation by 490 days. The assessee filed the petition for condonation of delay along with affidavit. The assessee has stated that during the assessment stage, the Id.Assessing Officer has mentioned wrong address in the assessment order stating as follows:

M/s Rajesh Filaments Pvt. Ltd.,
2015, Mahvir Textile Market,
Ring Road, Surat – 395002

3. When the assessee filed appeal before the Ld.CIT(A), the Ld.Counsel for the assessee has repeated the said wrong address in Form No.35. The Ld.CIT(A) sent

the notice for hearings on the said wrong address mentioned in Form No.35, therefore, notices for hearing could not be served on the assessee during appellate proceedings. Consequently, the Ld.CIT(A) had passed *ex-parte* order without hearing the assessee on the grounds raised by the assessee on merits.

4. The Ld.Counsel submits that correct address mentioned by the assessee is in Form No.36, which is as follows:

M/s.Rajesh Filaments Pvt Ltd.
218, Jeevandeep Complex,
Ring Road, Surat – 395001.

5. Based on the facts narrated in the affidavit, the Ld. Counsel submits before us that reason for delay of 490 days in filing the appeal before this Tribunal was due to mistake committed by AO in mentioning the wrong address in the assessment order and the said wrong address was continued till the appellate stage, therefore, the said delay may be condoned.

6. On the other hand, Ld.DR submits that assessee has failed to explain the delay satisfactorily, therefore, the delay may not be condoned.

7. We have heard both parties. We note that delay in filing the appeal has arisen due to wrong address mentioned by AO in his assessment order and said wrong address was continued during the appellate proceedings that is why, notices for hearings could not be served on the assessee during the appellate stage. Because of this reason, the order of Ld.CIT(A) could not be served on the assessee and thus, it resulted the delay of 490 days in filing appeal before this Tribunal. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that delay was due to mistake committed by AO in mentioning

the address in the assessment order which was continued till the appellate stage, therefore, assessee should not be penalized. We note that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. We note that assessee has explained the delay satisfactorily, therefore, we condone the delay and admit the appeal for hearing.

8. Since the order passed by the Ld.CIT(A) is an *ex-parte* order and assessee could not plead his case before the Ld.CIT(A), therefore, we are of the view that one more opportunity should be given to assessee to plead his case before the Ld.CIT(A). The Ld.DR did not have any objection if the matter is remitted back to the file of Ld.CIT(A). Therefore, we set-aside the order of Ld.CIT(A) and remit the matter back to the file of the Ld.CIT(A) for *denovo* adjudication.

9. In the result, appeal of the assessee is allowed for statistical purpose.

Order is pronounced at the time of hearing of appeal on 04/06/2021 in the Virtual Court of hearing.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Surat /दिनांक/ Date: 14/06/2021 /sgr

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat