

**आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI**

श्री महावीर सिंह, उपाध्यक्ष के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VICE PRESIDENT

आयकर अपील सं./ ITA No. 520/Mum/2020

(निर्धारण वर्ष / Assessment Year 2014-15)

Elastomer Processors Employees Gratuity fund R-86 TTC Industrial Area Rabale Ghansoli Navi Mumbai-400701	Vs.	The Asst. Commissioner of Income Tax (CPC) Bangalore Post bag No. 2, Electronic City Post office, Bangalore-560100
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAATE0136H</b>		

अपीलार्थी की ओर से / <b>Appellant by</b>	:	Ms. Nelam Jadhav, AR
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri V.K. Chaturvedi, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	06.10.2021
घोषणा की तारीख / <b>Date of pronouncement :</b>	06.10.2021

**आदेश / ORDER**

**महावीर सिंह, उपाध्यक्ष के द्वारा /**  
**PER MAHAVIR SINGH, VP:**

This appeal of assessee is arising out of order of the Commissioner of Income Tax (Appeals)-1, Mumbai [in short CIT(A)], in appeal No. CIT(A)-1/877/ACIT(CPC)/2018-19 vide dated 26.11.2019. The Assessment was framed by the ACIT(CPC) Bangalore for the A.Y. 2014-15 under section 143(1) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee Ms. Neelam Jadhav stated the first ground that the CIT(A) has erred in not condoning the delay of 880 days. For this assessee has raised the following ground:-

"I. Condonation of delay



1. *The learned CIT(A) erred in dismissing the appeal only on the ground that the reasons for delay of 880 days in filing an before the CIT(A) was not satisfactory and bonafide.*
2. *The learned CIT(A) failed to appreciate that the delay in filing the appeal was due to bonafide as the appellant was pursuing the remedy of rectification application u/s 154 as per the advice of the Chartered Accountant. Hence, the delay in filing of appeal maybe directed to be condoned."*
3. The learned counsel for the assessee stated that the assessee was pursuing the remedy of rectification under section 154 of the Act in respect of intimation under section 143 (1) of the Act. The online application for rectification was filed on 13.04.2016 but the same was rejected on 25.10.2016. Subsequently, an application for rectification was sought to be filed with the jurisdictional Assessing Officer, which was refused by the Assessing Officer, since the Trust did not register under section 12A of the Act. The Trust was asked to get its Jurisdiction changed. The Trust filed an application for change of jurisdiction of PAN with the new jurisdictional officer on 06.09.2017 but no change of jurisdiction had effected. Against the above background the assessee preferred the appeal before CIT(A) and sought for condonation of delay for filing the appeal.
4. Admittedly, the intimation under section 143(1) of the Act was received by the assessee Trust on 09.01.2016 and against which the assessee filed rectification application under section 154 of the Act on 13.04.2016, which was rejected on 25.10.2016. The Assessing Officer refused to entertain this



rectification application and the assessee did not have registration under section 12A of the Act. Hence, an application for change of jurisdiction was made on 06.09.2017. The assessee's counsel, Ms. Neelam Jhadav stated that the assessee was advised by his chartered accountant that he has to pursue another rectification and assessee under bona fide belief, believed that the Chartered Accountant but ultimately the appeal was filed only on 02.07.2018. Thereby, there is delay of 880 days. When these facts were confronted to the learned Sr. Departmental Representative he agreed that this is a gratuity fund of employees being charitable, the delay in the given reasons can be condoned.

5. In view of the above facts, that the assessee was pursuing alternative remedy and moreover, assessee being a charitable institution, I condone the delay before CIT(A) and remand the matter back to his file for adjudication on merits.

6. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 06.10.2021.

Sd/-  
(महावीर सिंह /MAHAVIR SINGH)  
(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 06.10.2021  
सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



**आदेश की 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 (Asth. Registrar)/ व.निजी सचिव (Sr.PS)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai