

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 450/मुं/2020 (नि.व.2005-06)
ITA NO.450/MUM/2020 (A.Y.2005-06)
आअसं. 452/मुं/2020 (नि.व.2006-07)
ITA NO.452/MUM/2020 (A.Y.2006-07)
आअसं. 454/मुं/2020 (नि.व.2007-08)
ITA NO.454/MUM/2020 (A.Y.2007-08)
आअसं. 456/मुं/2020 (नि.व.2014-15)
ITA NO.456/MUM/2020 (A.Y.2014-15)

M/s Spectrum Chemicals Pvt. Ltd.
201, Rajani Building, 569,
M.G. Road, Indore,
Madhya Pradesh-452001.

PAN: **AAICS2382L**

..... अपीलार्थी /Appellant

बनाम Vs.

ITO-2(3)(2)
3rd & 4th Floor, Pratishta Bhavan,
M.K. Road, Mumbai-400020.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Sh. Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 29/06/2021

घोषणा की तिथि/ Date of pronouncement : 23/09/2021

आदेश/ ORDER

PER VIKAS AWASTHY, J.M:

These four appeals by the assessee are directed against the orders of
Commissioner of Income Tax (Appeals)-6, Mumbai [hereinafter referred to as

‘the CIT(A)’. The appeals in ITA No. 450, 452 & 454/Mum/2020 for the Assessment Years (AY) 2005-06, 2006-07 & 2007-08, respectively were decided by the CIT(A) vide separate orders of even date i.e. 07.10.2019 in an ex-parte proceedings. The appeal of the assessee in ITA No. 456/Mum/2020 for AY 2014-15 was too decided ex-parte by the CIT(A) vide order dated 25.10.2019. Since, the issues raised in all these appeals are common, these appeals are taken up together for adjudication and are decided vide this common order.

ITA No. 450, 452 & 454/Mum/2020 for AYs 2005-06 to 2007-08

2. Sh. Sanjay J. Sethi representing the Department submitted that the assessee had filed first appeals before the CIT(A) for AYs 2005-06, 2006-07 & 2007-08 beyond the period of limitation. The appeals were time barred by 634 days, no application explaining reasons for delay and seeking condonation of delay was filed by the assessee along with the appeals. The CIT(A) had issued repeated notices, however, the same were received back from postal authorities with remarks “Not Known”. Thus, there was absolute non-compliance by the assessee before the CIT(A). In absence of any application seeking condonation of delay, the CIT(A) dismissed the appeal of assessee on the ground of limitation. The CIT(A) was constrained to pass order ex-parte dismissing appeal on the ground of limitation. Even before the AO, the assessee had failed to produce relevant documents, there was non-co-operation and non-compliance on the part of the assessee during the assessment proceedings.

3. Submissions made by Id. DR heard, orders of the authorities below examined. A perusal of the records reveals that the assessee was defiant and failed to comply with the notices issued by the AO during assessment proceedings. Thereafter, the assessee filed appeal before the CIT(A). The same

was time barred by 634 days, no application seeking condonation of delay was filed by the assessee before the CIT(A). The CIT(A) had issued notice of hearing of the appeals. However, the same could not be served and were returned by the postal authorities with remarks "Not Known". Thereafter, the CIT(A) issued notice dated 24.04.2019 at Indore address of the assessee for hearing fixed on 24.09.2019. As per impugned order, the notice was served and the acknowledgement of service of notice is stated to be on record. Despite service of notice, the assessee failed to appear before the CIT(A). In absence of any application for condonation of delay, the CIT(A) dismissed the appeal of assessee on the ground of limitation. A perusal o the assessment order and the impugned order shows that the assessee is recalcitrant. However, keeping in view the principles of natural justice, I deem it appropriate to afford one more opportunity to the assessee/appellant to appear before the CIT(A). The assessee shall file application explaining reasons for delay in filing of the appeals. Thereafter, the CIT(A) shall consider the said application and dispose of the same in accordance with law. Needless to say that the CIT(A) shall grant reasonable opportunity of hearing to the assessee/appellant before deciding the assessee's application for condonation of delay and the appeal, if delay is condoned.

4. The impugned orders for AY 2005-06, 2006-07 & 2007-08 are set-aside and the appeals for aforesaid AYs by the assessee are allowed for statistical purpose.

ITA No. 456/Mum/2020 for AY 2014-15

5. The assessee in appeal has assailed ex-parte order by the CIT(A). A perusal of the impugned order shows that the CIT(A) has dismissed the appeal

of assessee following the order passed by CIT(A) in AY 2012-13. Taking into consideration the fact that the impugned order was passed in the absence of assessee, in the interest of justice the appeal is restored to the file of CIT(A) for fresh adjudication on merits after affording opportunity of hearing to the assessee, in accordance with law. The impugned order is set-aside and appeal of the assessee is allowed for statistical purpose

6. To sum up, the appeal of assessee for AY 2005-06 to 2007-08 and 2014-15 are allowed for statistical purpose.

Order pronounced in the open court on **Thursday**, the **23rd** day of September, 2021.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated: 23/09/2021

SK, PS

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai