

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA No.5170/Del/2018  
Assessment Year: 2010-11

M/s. SMS Holdings (P) Ltd., A-77, Swasthya Vihar, Delhi-1100 92	<b>Vs.</b>	ACIT, CPC, Bangalore.
<b>PAN :AABCS7079R</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	S/s. Salil Kapoor, Sumit Lal Chandani & Ms. Ananya Kapoor, Advocates
Respondent by	Shri H.K.Chaudhary, CIT (DR)

Date of hearing	02.03.2022
Date of pronouncement	17.03.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

This is an appeal by assessee against order dated 31.5.2018 of learned Commissioner of Income-Tax (Appeals)-8, New Delhi for assessment year 2010-11.

2. The basic grievance of the assessee in the present appeal is against disposal of its appeal in limine without condoning the delay.

3. Briefly, facts are, assessee is a resident-company. For the impugned assessment year, assessee filed its return of income on 29.09.2010. The return of income filed by the assessee was processed by Centralized Processing Centre (CPC Bangalore). While processing the return, assessing officer allowed MAT credit under Section 115JJA of the Act excluding surcharge and education cess. Whereas, according to the assessee MAT credit has to be computed including, sur-charge and education cess. Therefore, assessee filed an application for rectification under Section 154 of the Act, for rectification of the order. However, the rectification application so filed by the assessee was rejected by the CPC.

4. Being aggrieved, assessee filed an appeal before the first appellate authority belatedly with inordinate delay of 1844 days. Of course, assessee filed an application seeking condonation of delay. Not being satisfied with the reason shown by the assessee for condoning delay, learned Commissioner (Appeals) dismissed assessee's appeal in limine without condoning the delay.

5. Before us, learned counsel for the assessee submitted, keeping in view the legal position prevailing at the time of disposal of assessee's

rectification application, on legal advise, assessee did not prefer any appeal before the first appellate authority. However, subsequently, there was change in legal position by virtue of a decision of Tribunal in case of Virtusa (India) Pvt. Private Ltd. in ITA No.146/Hyd/2016 dated 04.03.2016 which came to the notice of the assessee in the month of December 2016, and on the advise of the new counsel the assessee filed the appeal before learned Commissioner (Appeals). Thus, he submitted, there was reasonable cause for delay in filing the appeal. Further, he submitted, subsequently there are various other decisions of the Tribunal and High Courts, wherein the issue relating to the computation of MAT credit has been decided in favour of the assessee. Thus, he submitted, when assessee has a strong case on merits he should not be debarred from establishing his case on merit by dismissing the appeal on technical grounds. In support of his contention, learned counsel for the assessee relied upon a number of judicial precedents including the landmark decision of the Hon'ble Supreme Court in case of Collector, Land Acquisition Vs. MST. Katiji & Ors. ( 167 ITR 471 ) (SC).

6. Learned Departmental Representative submitted, the matter may be restored back to learned Commissioner (Appeals) for deciding the issue on merits.

7. We have considered rival submissions and perused the material on record.

8. Undisputedly, due to inordinate delay in filing the appeal, learned Commissioner (Appeals) has dismissed the appeal in limine without going into the merits of the issue. However, considering the submissions of the assessee and going through the decisions, cited on the issue of MAT credit, prima facie, we are of the opinion that assessee has a strong case on merit, hence, deserves to be heard on the substantive issue of computation of MAT credit whether offer including or excluding sur-charge and education cess etc. It is now fairly well settled, when justice and technicalities are pitted against each other, the courts should always lean in favour of cause of justice rather than technicalities, unless, there is deliberate lackes and negligence on the part of the assessee to pursue the cause of justice. In the facts of the present case, we are of the view that assessee has made out reasonable cause for delay in filing of appeal. Moreover,

considering the fact that the assessee may have a strong case on merits, we are inclined to restore the issue to the file of learned Commissioner (Appeals) for condoning delay and deciding assessee's appeal on merits. Needless to mention, learned Commissioner (Appeals) must afford reasonable opportunity of being heard to the assessee before deciding the appeal.

9. In the result, the appeal is allowed for statistical purposes.

***Order pronounced in the open court on 17<sup>th</sup> March, 2022***

**Sd/-  
( DR. BRR KUMAR )  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 17<sup>th</sup> March, 2022.  
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	08.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	08.03.2022
3.	Date on which the draft of order is placed before the other Member:	08.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	08.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been signed/pronounced by the Members:	17.03.2022
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	17.03.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	