

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.2032/PUN/2019
निर्धारणवर्ष / Assessment Year : 2008-09

Muktesh Private Limited, (Formerly known as Muktesh Chemicals Pvt. Ltd.), Sarvatra Housing Society, Paud Road, Pune – 411 029. P_AN : AABCM 1922 F	Vs	The ITO, Ward-11(1), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Saurabh Bora – AR
Revenue by	Shri S.P. Walimbe - DR
Date of hearing	09/06/2022
Date of pronouncement	06/07/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id. Commissioner of Income Tax(Appeals)-9, Pune for the A.Y. 2008-09 dated 15.10.2019.

2. Briefly stated, the facts of the case are that the assessee is a company and engaged in the manufacturing of DNA chemicals. However, it discontinued the business and the sheds were given on rent. The assessee filed its return of income on 29.09.2008 declaring Rs.Nil income and claimed business loss and depreciation loss of Rs.4,77,246/-. The case was selected for scrutiny. The assessee shown rental income of Rs.4,77,246/- and claimed set off against the

business loss and depreciation loss. Eventually, the AO, in the assessment completed u/s.143(3) treated the same as income from house property and levied penalty u/s.271(1)(c) of the Act for filing inaccurate particulars of income.

3. Aggrieved by the order of AO, the assessee preferred an appeal before the ld.CIT(A). There was a delay of 173 days in presenting the appeal before him. However, the ld.CIT(A) relying on various judicial precedents has dismissed the appeal of the assessee on the ground of delay alone. Relevant discussion has been made in para nos. 2.3 to 2.3.5 of the ld.CIT(A)'s order.

4. Aggrieved by the order of ld.CIT(A), the assessee has approached the Tribunal espousing the delay issue in the grounds of appeal and the issue of levy of penalty u/s.271(1)(c) of the Act as well.

5. We have heard both the sides and perused the relevant material on record. On perusal of the order of the ld.CIT(A), it is an admitted position that the ld.CIT(A) has not decided the penalty issue on merits instead he dismissed the appeal on the ground of delay alone. Therefore, the assessee, in our view, should not be precluded an opportunity of hearing on merits, simply on account of delay alone. Our view is further strengthened by the decision of Amritsar Bench

of the Tribunal in *Kashmir Road Lines Vs. DCIT (2021) 123 taxmann.com 5* where in it was held that even when the assessee is not interest in pursuing the appeal, even then, the Id.CIT(A) should dispose of the appeal of merits. In view of the aforementioned reasons, we set-aside the impugned order and remit the matter to the file of the Id.CIT(A) with a direction to dispose of the appeal afresh on merits as per law after allowing a reasonable opportunity of hearing to the assessee.

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

Order pronounced in the open Court on 6th July, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 6th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.