

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष**  
**Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.343/Kol/2022**  
**Assessment Year: 2008-09**

**M/s Kkalpana Plastick Ltd.....Appellant**  
**Maruti Building, 5<sup>th</sup> Floor, Flat No.5F,**  
**12, Dr. U.N. Brahmachari Street,**  
**Kolkata – 700017.**  
**PAN: AADCS8894C]**

**vs.**

**ITO, Ward-10(3), Kolkata.....Respondent**

**Appearances by:**

Shri S. K. Tulsian, Advocate, appeared on behalf of the appellant.

Shri Vijay Kumar, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 07, 2022

Date of pronouncing the order : November 16, 2022

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 29.05.2022 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee is aggrieved by the action of the CIT(A) in rejecting the appeal of the assessee against the rectification order passed by the Assessing Officer u/s 154 of the Act dated 30.07.2014 holding that the appeal was barred by limitation and even rejecting the same on merits also.

3. The brief facts of the case are that shares of a listed Company, M/s Kaipaa Industries Ltd (KIL) are stated to be sold by the appellant during the AY 2008-06. Appellant has claimed that these were long term capital assets held by it. As per the ITR, there are stated to be purchased for sum of Rs. 1,75,92,390/- and sold at Rs.3,69,59,028/-. Profit on sale of shares is shown as 1,93,66,638/- without the payment of STT, thereby making it to be an off market transaction. On the other hand,

while calculating LTCG of Rs. 1,93,66,638/- benefit of indexation has not been opted by appellant. In the usual course, Long term capital gains are taxed @20% after adjusting for inflation by indexing the cost of acquisition. However, in the case of listed securities, the taxpayer has an option to pay tax on long term capital gains @ 10% but without indexation.

4. The assessee e-filed its return of income. In the online form, Section Code for long-term capital gains (without indexation) to be opted was "Code 22". On opting the said Section Code 22, the tax automatically got calculated @10%. However, due some software issue in the online form, which was beyond the control of the assessee, Section Code was automatically selected as Section Code 21, which was in fact meant for tax @20% on long-term capital gains with benefit of indexations. However, though the Code was mentioned as 21 due to the aforesaid technical glitch but the assessee was rightly charged tax @10% of LTCG.

However, while processing the return u/s 143(1) of the Act, the CPC/Assessing Officer noting that the Code mentioned in the online ITR form was 21, taxed the long-term capital gains @20% vide order dated 31.07.2009.

5. Thereafter, the appellant filed rectification petition u/s 154 of the Act dated 23.01.2013, whereupon the order u/s 154 of the Act was passed by the Assessing Officer/CPC on 11.06.2014, rectifying the aforesaid order dated 31.07.2009 and thereby reducing the tax @10%.

6. Subsequently, a second rectification order u/s 154 of the Act dated 30.07.2014 was passed by the Assessing Officer without intimating the assessee/appellant and without show-causing the assessee and again charged the tax @20% because of the misunderstanding occurred due to aforesaid technical glitch. Thereafter, the assessee again filed rectification application to the Assessing Officer whereupon, the Assessing Officer called upon the assessee to file various details and replies. The assessee filed the reply and document as required by the Assessing Officer. The Assessing Officer, thereafter, issued a letter dated 12.03.2019 to the assessee acknowledging rectification order passed u/s 154 of the Act dated 11.06.2014 raising demand of Rs.1,39,880/-

,which was duly paid by the assessee. However, the Assessing Officer rejected the second rectification application on the ground that in the online ITR form the Code was mentioned as 21 instead of 22. Thereafter, the appellant filed his grievance petition on CPGRAM (Central Govt. Portal for Filing Grievance etc.). However, the same was also rejected. Thereafter, the appellant filed the present appeal against the aforesaid rectification order passed by the Assessing Officer.

7. The Id. CIT(A), however, has dismissed the appeal of the assessee holding that the same was barred by limitation and also on merits on the ground that the Code mentioned in the form was 21 instead of 22.

8. After hearing the rival contentions of the Id. representatives of the parties and going through the record, we are of the view that in this case, the assessee seems to be a victim of official apathy. The facts of the file reveal beyond doubt that the assessee filed its correct return of income and opted for 10% tax on long-term capital gains without indexation. However, due to some technical glitch, the Code mentioned in the form was selected as 21 instead of 22. However, the rate of tax mentioned in the form remained @10%. These facts, itself, show that there was a technical glitch in the software. Had the assessee have chosen the Code 21, then the tax rate automatically would have been calculated by the software @20% but, in this case the software rightly calculated the tax @10% only.

Then, Assessing Officer, considering the facts and circumstances of the case, allowed the rectification application and rectified the order and charged the assessee @10%. The assessee duly paid the demand accordingly.

Again, without examining the earlier order, the Assessing Officer again amended the order passed u/s 143(1) of the Act and again raised the demand @20% of the LTCG.

Thereafter, the assessee filed many applications not only to the Assessing Officer but also to the Prime Minister's Grievance Portal but to no effect, his rectification application being rejected vide communication dated 12.03.2019. The assessee again filed grievance petition with the CPGRAM portal on 04.04.2019 but to no effect.

Thereafter, a demand was raised vide notice dated 03.02.2020 and the assessee filed appeal on 20.02.2020.

Though the case of the assessee is that he was never served upon the second rectification order and that he came to know of the second rectification order only on receipt of demand notice dated 03.02.2020 and that all the correspondences were made under the impression and in response to the earlier rectification petition dated 23.01.2013, however, the Id. CIT(A) has dismissed the appeal observing that the assessee was aware of the second rectification order dated 30.07.2014. Whatever the case may be, it is apparent from the record that the assessee was neither served with earlier rectification order dated 11.06.2014 nor with the second rectification order dated 30.07.2014. The assessee though continued to file various applications not only to the Assessing Officer but also to the CPGRAM portal till 04.04.2019, and thereafter, when he was served with the demand notice dated 03.02.2020, he filed the present appeal. The facts show that it is not a case where the assessee-appellant had remained negligent in pursuing its remedy before the competent authority, rather it is a case of official apathy where the genuine grievance of the assessee has been overlooked, ignored and rejected and uncalled for demand was raised from the assessee. It has been held time and again that the Income Tax Authorities should charge legitimate taxes from the taxpayers. In this case, not only the Assessing Officer but also the CIT(A) has failed to exercise jurisdiction vested with him. In view of this, the impugned order of the CIT(A) is quashed. The second rectification order dated 30.07.2014 is also hereby quashed and consequential demand raised by levying tax @20% on LTCG is also set aside.

9. In the result, the appeal of the assessee stands allowed.

***Kolkata, the 16<sup>th</sup> November, 2022.***

Sd/-  
[राजेश कुमार /Rajesh Kumar]  
लेखा सदस्य /Accountant Member

Sd/-  
[संजय गर्ग /Sanjay Garg]  
न्यायिक सदस्य /Judicial Member

Dated:16.11.2022.

RS

*Copy of the order forwarded to:*

1. M/s Kkalpana Plastick Ltd
2. ITO, Ward-10(3), Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches