

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3871/MUM/2024
Assessment Year: 2020-21**

Midas Hygiene Industries Pvt. Ltd., 170A/Pranay, Sector 12, Vashi, Navi Mumbai- 400703 (PAN : AABCM9915G)	Vs.	Assistant Director of Income Tax, Central Processing Unit, Bengaluru
(Appellant)		(Respondent)

Present for:

Assessee : Shri P.P. Jayraman, CA
Revenue : Shri R.R. Makwana, Addl. CIT

Date of Hearing : 30.01.2025
Date of Pronouncement : 10.02.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Bhubaneswar, vide order no. ITBA/APL/S/250/2024-25/1065591521(1), dated 12.06.2024 passed against the intimation issued by the Centralised Processing Centre of the Department (CPC), Bengaluru, u/s. 143(1) of the Income-tax Act (hereinafter referred to as the “Act”), dated 18.12.2021 for Assessment Year 2020-21.

2. Grounds taken by the assessee are reproduced as under:

1. Disallowance u/s 40(a)(ia): That on the facts and the circumstances of the case and in law the Learned Commissioner of Income Tax (Appeals) has erred in dismissing the appeal without considering the merits of the case.

The CPC u/s 143(1) has made the addition on two grounds as below:

- (i) Addition made for delay in depositing employee contributions to the welfare fund Rs. 12,302/
- (ii) Additions made u/s 40(a)(ia) Rs. 55,47,925/ -

The above additions made by CPC u/s 143(1) resulted into increase in total 4,01,06,290/- income to Rs. and thereby issue of demand for Rs. 18,90,390/- vis--vis no tax payable as per the ROI filed by the appellant. Aggrieved by the intimation order passed u/s 143(1), appeal was filed before Ld. CIT(A) which has been dismissed vide order dated 12.06.2024.

Your Honour please request note that the appeal filed before CIT(A) was delayed and it was filed with Condonation request explaining the dismissed the appeal on reason for delay of appeal. However, Ld. CIT(A) has the ground of merits of rejecting Condonation of appeal without discussing the the case.

Your Honour out of two grounds taken before Ld CIT(A); the first ground is withdrawn/ not pressed after Apex Court's decision in the case of Checkmate Services Pvt Ltd. The second ground is only taken before Honourable ITAT for adjudication on merits.

The only issue involved in the appeal is that the appellant has not deducted TDS on performance bonus /remuneration paid to one Director of the company Mr Swadesh Kapoor (Rs. 1,84,93,086/-). Please note that the payee Mr Swadesh Kapoor had paid the due income tax on such remuneration paid to him during the year and filed his return of income. Therefore, the appellant is of the view that the case is covered by the proviso given u/s 201 of the Act and therefore the appellant is not required to consider this amount for making disallowance in it's ROI. But the CPC while processing the ROI had not considered this fact and made adjustment of Rs. 55,47,925/- being 30% of performance bonus paid to Mr Swadesh Kapoor.

The appellant request your Honour to allow it to produce the required details/documents under the proviso of section 201 during the appellant proceedings and decide the case on merit.

3. At the outset, it was pointed out by the ld. Counsel for the assessee that appeal by ld. CIT(A) has been dismissed on the ground of rejection of petition for condonation of delay without dealing in the merits of the case. There was a delay of 182 days in filing of appeal before the ld. CIT(A). Assessee had furnished reasons for condoning the delay which were rejected by the ld. CIT(A). Further, it is noted that return of income filed by assessee on 12.01.2021, reporting total income at Rs.3,45,46,010/- was processed u/s. 143(1) by CPC vide intimation dated 18.12.2021.

4. Before us, Id. Counsel for the assessee made a written submission explaining the delay caused in filing the first appeal. An affidavit by the Director of the assessee is also placed on record to explain the delay so caused.

5. We have considered the facts in the case and perused the material on record. The facts stated above are undisputed. There is a delay of 182 days in filing the appeal by the assessee before the Id. CIT(A) which has not been condoned and the first appeal has been dismissed on account of this delay without going into the merits of the case.

6. To address the issue in hand before us, we need to delve into the understanding of the expression “sufficient cause”. Sub-section 3 of Section 249 contemplates that the CIT(A) may admit an appeal after expiry of relevant period, if he is satisfied that there was a “sufficient cause” for not presenting it within that period. Similarly, it has been used in section 5 of Indian Limitation Act, 1963. Whenever interpretation and construction of this expression has fallen for consideration before Hon'ble High Courts as well as before the Hon'ble Supreme Court, then, Hon'ble Courts were unanimous in their conclusion that this expression is to be used liberally.

6.1. We may make reference to the following observations of the Hon'ble Supreme Court from the decision in the case of *Collector Land Acquisition Vs. Mst. Katiji & Others*, 1987 AIR 1353:

- "1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

6.2. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of *N.Balakrishnan Vs. M. Krishnamurthy (supra)*. It reads as under:

"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

*A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under [Section 5](#) of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575]* and *State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]*. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it*

is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

6.3. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. It is suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

6.4. In light of the above, if we examine the facts then it would reveal that there is a delay of 182 days in filing of the first appeal by the assessee before the ld. CIT(A). In its submissions before the ld. CIT(A), assessee has explained the reasons which prevented him in filing the appeal within the prescribed limitation. Therefore, for the just decision of the controversy, it is appropriate on our part to condone the delay. Considering the said explanation of the assessee, we condone the same.

7. Since the grounds raised by the assessee at the first appellant stage have not been adjudicated on merits, we find it proper to remit the matter back to the file of ld. CIT(A) for *denovo* meritorious adjudication of the same. Needless to say, the assessee be given reasonable opportunity of being heard and the assessee shall also be cooperating for the effective disposal of the appeal and will be at liberty to make further submissions as deem fit. Accordingly, grounds

taken by the assessee in this respect are allowed for statistical purposes.

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

Order is pronounced in the open court on 10 February, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 10 February, 2025

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai