

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI BHAGCHAND, AM

आयकर अपील सं./ITA Nos. 359, 360 & 361/JP/2018
निर्धारण वर्ष/Assessment Years : 2013-14 24Q2 & 24Q4 and 2014-15 24Q1.

The AEN (O&M), Ajmer Vidhyut Vitaran Nigam Ltd., Srimadhapur.	बनाम Vs.	The ACIT, CPC, (TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN No. /TAN No. JDHA 03463 F		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Ankur Salgia (CA)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 21.05.2018.
घोषणा की तारीख / Date of Pronouncement : 22/05/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

These three appeals by the assessee are directed against three separate orders of Id. CIT (A), Ajmer dated 12th October, 2017 & 5th October, 2017 arising from the orders for levy of fees under section 234E read with section 200A(1) of the IT Act for the assessment years 2013-14 24Q2 & 24Q4 and 2014-15 24Q1 respectively.

2. There is a delay of 65 days, 62 days and 62 days respectively in filing these appeals. The assessee has filed the application for condonation of delay which is supported by affidavit of the Assistant Engineer, Ajmer Vidhyut Vitaran Nigam Ltd., Srimadhapur, Sikar.

3. We have heard the Id. A/R as well as the Id. D/R on condonation of delay of 65 days, 62 days and 62 days respectively in filing these appeals. It is explained that the concerned employee who was handling the matter misplaced the impugned orders passed by the Id. CIT (A) and went on leave. After he returned from leave tried to search the orders but failed and thereafter finally the files along with the impugned orders were found. Hence it is explained that the delay in filing the appeals is neither intentional nor willful but due to the unavoidable circumstances that the concern files were got misplaced and only after the files were traced out the present appeals were filed. The Id. A/R of the assessee has relied upon the decision of Hon'ble Supreme Court in the case of State of Bihar vs. Kamshevar Prasad Singh, AIR 2000 SC 2006 as well as in the case of Poonja Arcade vs. Asstt. CIT, 326 ITR 123 of Hon'ble Karnataka High Court. He has also relied upon the decision of Hon'ble Supreme Court in the case of Vedabai Vijayanatabai Baburao Patil vs. Shantaram Baburao Patil, 253 ITR 798 (SC). Thus the Id. A/R has submitted that the delay in filing the appeals may be condoned and the appeals may be disposed off on merits.

3.1. On the other hand, the Id. D/R has submitted that the assessee is habitual in filing the appeal belatedly. The Id. CIT (A) vide impugned order has dismissed the appeals of the assessee as time barred, therefore, the assessee's conduct does not deserve any liberal approach to be adopted.

4. We have considered the rival submissions as well as the relevant material on record. The assessee has explained the delay that the concerned files along with the impugned orders were got misplaced by the employee of the assessee and only when the files were finally traced out, the present appeals were filed without any further delay. This explanation has been duly supported by the affidavit of the Assistant Engineer of the assessee Nigam. Having considered the facts and circumstances of the case, when there is nothing to show that the assessee would have achieved any ulterior purpose by filing the present appeals belatedly, accordingly in the interest of justice we condone the delay of 65 days, 62 days and 62 days respectively in filing these appeals.

5. The assessee has filed the common grounds in these appeals as under :-

ITA No. 359/JP/2018 :

“ In the facts & circumstances of the case the Id. CIT Appeals, Ajmer has erred in not admitting the appeal for LATE FEES imposed u/s 234E Under clause (c) of sub section 1 of 200A.

1. The assessee has filed an appeal with Id. CIT (appeals) Ajmer which was technically delayed. The delay in filing the appeal was due to the fact the appellant/applicant did not received any intimation from department, on knowledge from portal the assessee comes to know and he filed an appeal thereof.
2. The Id. CIT (Appeals) has erred in dismissing appeal as not admitted the appeal on the basis of remand report from AO as Email communication is being effective from 20/10/2015 as per notification no. 89/2015. Also NSDL made Mandatory in TDS return email on 13/04/2016.

3. The Id. CIT (Appeals) has erred in dismissing Appeal as not admitted without considering the case on merits. Refusing to condone delay has result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.
 4. The tax was deducted & deposited in time, the only default is delay in filing of the return, the alleged delay in filing the TDS statement has not resulted in any loss of revenue to the department and, therefore, the default, if any, was purely venial breach. The assessee was being GOVT, COMPANY working in public interest and there was no mala fide intention of not filing the TDS return at source within time.
 5. As per provision of Sec. 234 E late fee cannot be recovered for TDS statements which were due for F.Y. 2011-12 as well on TDS statements late fee cannot be recovered for F.Y. 12-13 if not collected at the time of delivering TDS statements to the deptt. Provision of Sec. 234 E has been made applicant with effect from 1st July 2012. It states that "Amount of late fee shall be paid before delivering a TDS statement". It means that any late fee should have fee deposited just at the time of delivering TDS statements & not later than this. The authorized TIN-NSDL centre which accepted the TDS statements also accepted there without late fee, as well as the software utility of the TDS deptt. It self accepted these without late fee. There was no enabling provision in Section 200A of the Act for making adjustment in respect of the statement filed by the assessee with regard to tax deducted at source by levying fee under Section 234E of the Act.
 6. In the facts & circumstances of the case the learned A.O. erred in imposing late fee without appreciating the facts & circumstances of the case and hence the same should be deleted.
 7. That the order is bad in law.
 8. The appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal with the prior permission of the chair.
6. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. The Id. A/R has submitted that the assessee is a Government

Company working in public interest and there was no malafide intention for not filing the appeal in time before the Id. CIT (A). The Id. A/R has pointed out that assessee did not receive any order passed by the AO under section 234E and only when the demand notice was received by the assessee the appeals were filed before the Id. CIT (A) on 26.08.2016. The Id. A/R has further pointed out that the Id. CIT (A) has given the reference of sending the notice through e-mail. However, the assessee did not receive any such demand notice prior to the service of the notice. Thus the Id. A/R has submitted that the Id. CIT (A) has dismissed the appeals of the assessee in limini without giving an opportunity to the assessee to explain the delay, if any, in filing the appeals before the Id. CIT (A).

6.1. On the other hand, the Id. D/R has submitted that the Id. CIT (A) has given the finding that the demand notice was duly sent to the assessee through e-mail on 23.12.2013 whereas the appeals were filed by the assessee on 26.08.2016. Thus there was a delay of more than 31 months in filing the appeal before Id. CIT (A) and there was no explanation on behalf of the assessee. The Id. D/R has relied upon the orders of the authorities below.

7. Having considered the rival submissions as well as the relevant material on record, we note that the Id. CIT (A) has dismissed the appeals of the assessee in limini by recording the finding in para 3 as under :-

" 3. Thus, from the report of the AO, it is clear that the notice of demand was sent to the appellant on 23.12.2013 on the email ankurjaintata@rediffmail.com and salgiatds@rediffmail.com given by the appellant. As per Section 249(2), the appeal has to be presented

within 30 days of date of service of notice of demand. The appellant has not filed the appeal within the period specified u/s 249(2). There is an inordinate delay in filing the appeal. The appellant in his written submission filed on 12.10.2017 has contended that mail was never received by the appellant. The appellant has not furnished any documentary evidence to substantiate his argument. Therefore, the argument of the appellant is not accepted. I am of the considered view that the appellant did not have any sufficient cause for not presenting the appeal within the period specified u/s 249(2). Hence, the appeal is dismissed as "not admitted".

Thus the Id. CIT (A) has taken into consideration the alleged service of notice of demand through e-mail. However, other than the alleged e-mail, no other record was referred for service of notice to the assessee. Even otherwise, the assessee was not heard on the point of explanation of delay, if any, in filing the appeals before the Id. CIT (A). Therefore, we are of the considered opinion that the Id. CIT (A) has dismissed the appeals being barred by limitation even without giving a specific opportunity to the assessee to explain the delay, if any. The assessee has not claimed any delay in filing the appeals before the Id. CIT (A) whereas the Id. CIT (A) has considered the appeals filed by the assessee as barred by limitation. Accordingly, in such a situation, a defective memo was required to be issued to the assessee or the assessee ought to have been given an effective opportunity of hearing on the point of delay. Accordingly, in the facts and circumstances of the case and in the interest of justice, we set aside these two appeals to the record of the Id. CIT (A) for giving one more opportunity to the assessee to present its case and also to explain the cause of delay, if any, in filing the appeals. After considering

the explanation of the assessee, the Id. CIT (A) shall decide the issue of condonation of delay and thereafter the appeals on merit, if need arises.

8. In the result, appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 22/05/2018.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 22/05/2018.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- AEN (O&M), Ajmer Vidhyut Vitaran Nigam Ltd., Srimadhampur.
2. The Respondent – The ACIT, CPC, (TDS) Ghaziabad, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 359, 360 & 361/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

