

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

श्री विजय पाल राँव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 405 & 409/JP/2018
निर्धारण वर्ष/Assessment Year : 2016-17 24Q1 & 24Q2.

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| 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 : Shri Prithvi Raj 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 two appeals by the assessee are directed against two separate orders of Id. CIT (A), Ajmer dated 5th October, 2017 and 10th 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 year 2016-17 for quarter 1 and quarter 2.

2. There is a delay of 75 days and 78 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 75 days/78 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 Vaijayanatabai 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 75 days/78 days in filing these appeals.

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

ITA No. 405/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 against the intimation dated 20.8.2015 issued under section 200A of IT Act 1961 levying late filing Fee of Rs. 6600/- u/s 234 by ACIT, CPC (TDS) Ghaziabad (TDS return relates to 24Q 1st Qtr.)
2. 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.
3. 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. That when the TAX had been deposited in time, there could not have any object or intention as the part of assessee not to submit the return in time.

4. It is also relevant to note that the law has not made any person responsible, to deposit late fee, in case of default in depositing late fee along with TDS statement, which can be inferred from the provisions of Sec. 204 of the Act Section 204 particularly states that "for the purposes of Sec. 190 to Sec. 203 and for Sec. 285 of the Act the following persons would be responsible", so it is clear that for the purpose of Sec. 234E none of the person has been made responsible, therefore if any late fee is due and not deposited along with the TDS statement none can be held responsible to deposit it.

In our case the deductor is Government so company as per law Government cannot be held responsible person to deposit it.

5. 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.
6. That the order is bad in law.
7. 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 20.08.2015 whereas the appeals were filed by the assessee on 26.08.2016. Thus there was a delay of around 11 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 4 as under :-

" 4. Thus, from the report of the AO, it is clear that the notice of demand was sent to the appellant on 20.08.2015 on the email salgids@redifmail.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. 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/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(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., Srimadhapur.
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. 405 & 409/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

