

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2812, 2813, 2814 & 2815/Chny/2017

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Mullai Srinivasam Hospitals  
(P.) Ltd.,  
15, Sathyanarayanan Street,  
Swanapuri, Salem – 636 004.

v. The Deputy Commissioner of  
Income Tax,  
Centralized Processing Cell – TDS,  
Vaishali, Ghaziabad.

PAN : AAHCM 3228 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V.S. Jayakumar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Dr. S. Pandiyan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 28.05.2018

घोषणा की तारीख/Date of Pronouncement : 28.05.2018

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals), Salem, for the assessment year 2013-14. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri V.S. Jayakumar, the Ld.counsel for the assessee, submitted that there was a delay of 432 days in the filing the appeals before the CIT(Appeals) against the penalty levied by the Assessing Officer under Section 234E of the Income-tax Act, 1961 (in short 'the Act'). The CIT(Appeals) refused to condone the delay of 432 days. According to the Ld. counsel, many assessees have challenged the constitutional validity of Section 234E of the Act before various High Courts by way of Writ Petition. Moreover, in the case of the assessee, the Accountant left the service abruptly without any notice. Therefore, according to the Ld. counsel, the assessee could not file the appeals immediately. Placing reliance on the order of this Tribunal in I.T.A. Nos.3015, 3016 & 3017/Mds/2016, the Ld.counsel submitted that on identical circumstances, this Tribunal condoned the delay of 340 days in filing the appeals before the CIT(Appeals). Placing reliance on another order of this Tribunal in Smt. G. Indhirani v. DCIT in I.T.A. Nos.1019, 1020 & 1021/Mds/2015, the Ld.counsel submitted that fee levied under Section 234E of the Act was for the period prior to 01.06.2015. Therefore, according to the Ld. counsel, the Assessing Officer has no authority to levy the fee while proceeding the TDS return under Section 234E of the Act. On merit, according to the Ld. counsel, the issue is covered in favour of the assessee.

3. We heard Dr. S. Pandiyan, the Ld. Departmental Representative, also. The Ld. D.R. submitted that he is placing his reliance on the order of the CIT(Appeals).

4. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was a delay of 432 days in filing the appeals before the CIT(Appeals). It is not in dispute that the Accountant of the assessee left the service all of a sudden. The Assessing Officer admittedly levied fee while processing the TDS return and issuing intimation under Section 200A of the Act. On identical circumstances, this Tribunal in the case of Smt. G. Indhirani (supra) found that fee cannot be levied before 01.06.2015. Therefore, this Tribunal is of the considered opinion that there was a reasonable cause on the part of the assessee in not filing the appeals before the CIT(Appeals) within the prescribed period. Accordingly, the delay of 432 days is condoned. Now all the appeals of the assessee stand restored on the file of the CIT(Appeals). The CIT(Appeals) is directed to consider the appeals of the assessee on merit and decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28<sup>th</sup> May, 2018 at Chennai.

sd/-  
(अब्राहम पी.जॉर्ज)  
(Abraham P. George)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 28<sup>th</sup> May, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Salem
4. आयकर आयुक्त/CIT, TDS, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.