

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)

I.T.A. No. 4366/Mum/2017 (Assessment Year 2014-15)
I.T.A. No. 4367/Mum/2017 (Assessment Year 2014-15)
I.T.A. No. 4368/Mum/2017 (Assessment Year 2014-15)
I.T.A. No. 4369/Mum/2017 (Assessment Year 2014-15)
I.T.A. No. 4370/Mum/2017 (Assessment Year 2014-15)

Hotel Gurudevprasad Pvt. Ltd. Sattar Gafoor Chawal Behind Hotel Sachin, J.M. Road, Sarvoday Nagar Bhandup (West) Mumbai-400 078. PAN : AABCH5033Q (Appellant)	Vs.	Dy. CIT, CPC- TDS Aayakar Bhavan Sector-3, Vaishali Gahaziabad UP-201 010. (Respondent)
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Assessee by	None
Department by	Shri Manoj Kumar
Date of Hearing	31.10.2018
Date of Pronouncement	31.10.2018

O R D E R

Per Bench :-

All these appeal filed by the assessee are directed against common order dated 15.3.2017 passed by the learned CIT(A)-59, Mumbai and it relates to A.Y. 2014-15. The assessee has challenged the decision of the learned CIT(A) in rejecting the appeals filed by the assessee challenging the levy of fees u/s. 234E of the Act.

2. None appeared on behalf of the assessee and we noticed that the registered post send by the Registry has been returned un-served. We noticed that the learned CIT(A) has dismissed the appeals in limine for the reason that these appeals have been filed belatedly by around 343 days. In view of the above, we proceed to dispose of the appeals ex-parte, without presence of the assessee.

3. We noticed that the assessee has filed TDS returns for each of the quarters falling in Financial Year 2013-14 belatedly. Hence while processing TDS returns filed by the assessee, the Revenue has raised demand u/s. 234E of the Act in all the TDS returns. The Returns filed by the assessee has been processed sometime in the month of July, 2014. The assessee filed appeals challenging the levy of fees in August, 2015, resulting in delay of around 340 - 343 days in each of the appeals. With regard to the delay, the assessee submitted that the amendment to section 200A of the Act authorizing the levy of fees u/s. 234E of the Act, while processing the TDS returns, was brought into Act only w.e.f.1.6.2015. It was further stated that separate notice of demand was not served upon the assessee, meaning thereby, the assessee was waiting for demand notice for filing the appeals. After some time, the assessee, without waiting for formal notice of demand, has preferred the appeals at earliest possible opportunity. Accordingly, it was submitted before the learned CIT(A) that delay in filing the appeals was on account of technical reasons and also for reasons beyond the control of the assessee. The learned CIT(A), however, was not convinced with the explanations of the assessee and hence dismissed all the appeals in limine, without admitting them.

4. We heard Ld DR and perused the record. On going through the reasons furnished by the assessee for filing the appeals belatedly before the learned CIT(A), we noticed that the assessee has waited for notice of demand for filing the appeal and it is the say of the assessee that notice of demand has not been served to it till date. It is also submitted that provisions of section 200A of the Act was amended only w.e.f. 1.6.2015, whereby levy of fees u/s. 234E while processing return was authorised. Accordingly, the assessee has submitted that it has chosen to prefer the appeal after the amendment. In our view, the explanations furnished by the assessee appear to be reasonable. It is quite possible that the assessee could have waited for service of demand notice. Accordingly, we condone the delay in filing the impugned appeals before the learned CIT(A).

5. Since the learned CIT(A) has not adjudicated the issues on merits, we are of the view that these appeals are required to be restored to his file for adjudicating the issues on merit. Accordingly, we set aside the order passed by the learned CIT(A) in all appeals under consideration and restore all the issues contested by the assessee to his file for examining them afresh.

6. In the result, all the appeals filed by the assessee are treated as allowed for statistical purposes.

Order has been pronounced in the Court on 31.10.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 31/10/2018

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

PS