

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

श्री विजय पाल राँव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1159/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14.

M/s. Deepak Enterprises, Laxmi Narayan Vihar Colony, Madanganj-Kishangarh.	बनाम Vs.	The DCIT, CPC (TDS) Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAIFD 4189 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O.P. Bhateja (ITP)
राजस्व की ओर से / Revenue by: Shri A.S. Nehra (JCIT)

सुनवाई की तारीख / Date of Hearing : 08.11.2018.
घोषणा की तारीख / Date of Pronouncement : 08/11/2018.

आदेश / ORDER

This appeal by the assessee is directed against the order of the Id. CIT (A), Ajmer dated 16.08.2018 arising from the order passed by the AO under section 200A read with section 234E of the IT Act in respect of 4th quarter of assessment year 2013-14. The assessee has raised the grounds of appeal as under :-

- “ 1. On facts and in the circumstances of the case the Id. CIT (A), Ajmer has erred on facts and in law in not admitting the appeal of the appellant against late fee imposed u/s 234E of the I.T. Act under clause (c) of sub section (1) of the section 200A of the I.T. Act.
2. The Id. AO has erred on facts and in law in levying late filing fee u/s 234E of the I.T. Act.
3. Appellant keeps its right reserve to add, alter, amend or delete in grounds of appeal before or at the time of hearing of appeal.”

2. We have heard the Id. A/R as well as the Id. D/R and considered the relevant material on record. The appeal of the assessee was dismissed by the Id. CIT (A) in limine as not maintainable being barred by limitation and the impugned order was passed ex parte as none has appeared on behalf of the assessee. The Id. A/R of the assessee has submitted that the Id. CIT (A) has not given the assessee an opportunity after the report dated 14.08.2018 of the AO was considered for the purpose of limitation for filing the appeal before the Id. CIT (A). He has thus contended that the Id. CIT (A) has accepted the notice of demand allegedly sent by the AO through email to the Chartered Accountant of the assessee on 23.12.2013 instead of date of notice received by the assessee. Hence, the Id. A/R submitted that the Id. CIT (A) has passed the impugned order rejecting the appeal without giving an appropriate opportunity to the assessee to explain the delay, if any, in filing this appeal. In support of his contention, he has relied upon the decision of this Tribunal dated 22nd May, 2018 in case of AEN (O&M), Ajmer Vidhyut Vitaran Nigam Ltd. vs. ACIT, CPC (TDS) in ITA Nos. 405 & 409/JP/2018 as well as decisions of the Tribunal in case of Mohan Lal Vyas vs. DCIT CPC (TDS) in ITA No. 830/JP/2018 dated 19.09.2018 and in case of Trimurty Buildcon P. Ltd. vs. DCIT CPC (TDS) in ITA Nos. 18, 19 & 20/JP/2017 dated 29.10.2018.

3. On the other hand, the Id. D/R has submitted that the Id. CIT (A) has given number of opportunities to the assessee as stated in the impugned order and despite the sufficient opportunities given by the Id. CIT (A), none appeared on behalf of the assessee before the Id. CIT (A). Therefore, the assessee was not interested in pursuing the appeal and further once the demand notice was sent by

the AO through email as provided by the assessee, then the limitation will reckon from the said date of email and not from any subsequent notice, if any, received by the assessee. He has relied upon the impugned order of the Id. CIT (A).

4. Having considered the rival submissions as well as the relevant material on record, we note that the Id. CIT (A) has decided all these three appeals of the assessee on identical reasoning in para 3 & 4 as under :-

" 3.0. The AO in his report dated 14.08.2018 has reported as under:-

" आपके कार्यालय के पत्रांक क्रमांक CIT(A)AJM/2018-19/2851 दिनांक 26.07.2018 के द्वारा निर्धारित Deepak Enterprises,- TAN-JDHD04747B के द्वारा आपके यहाँ की गयी अपील संख्या 378/2015-16 कर निर्धारण वर्ष 2013.14/26Q 4th के संबंध में विभाग द्वारा निकाली गयी बकाया मांग की सूचना धारा 200A के तहत भेजने का सबूत मांगा गया है इस संबंध में लेख है कि विभागीय रेकॉर्ड देखने पर पाया गया कि निर्धारिती को इस मांग की सूचना दिनांक 23.12.2013 को निर्धारिती द्वारा विवरणी में दी गयी ई मेल आई डी cmagarwal1955@yahoo.co.in दी गयी थी जिसके लिये सिस्टम से निकाली गयी सूचना धारा 200A व इसको सर्विस कराने के विवरण संलग्न शीट में उपलब्ध है। प्रेषण रजिस्टर की छायाप्रती आपके अवलोकनार्थ भेजा जा रहा है।

अतः मामले में निर्धारिती के समय पर सर्विस करा दी गयी थी इस संबंध में रिपोर्ट आपको प्रस्तुत है।"

4.0. 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

cmagarwal1955@yahoo.co.in 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 it is clear that after the report of the AO dated 14.08.2018, no hearing was fixed by the Id. CIT (A) and the impugned order was passed on 16.08.2018. Therefore, the Id. CIT (A) has not given an effective opportunity of hearing to the assessee to explain the delay in filing the appeal, if any, before the Id. CIT (A). This Tribunal in case of AEN (O&M) Ajmer Vidhyut Vitaran Nigam Ltd. vs. ACIT (supra) vide order dated 22nd May, 2018 has considered an identical issue in para 7 as under :-

"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."

Accordingly, in the facts and circumstances of the case and following the earlier order of the Tribunal, we set aside the appeal 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 appeal. After considering the explanation to be furnished by the assessee, the Id. CIT (A) shall decide the issue of condonation of delay as well as the appeal on merit.

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

Order is pronounced in the open court on 08/11/2018.

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

Jaipur

Dated:- 08/11/2018.

Das/

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

1. The Appellant- M/s. Deepak Enterprises, Madanganj Kishangarh.
2. The Respondent – The DCIT, CPC (TDS), Ghaziabad.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 1159/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

