

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

SN	ITA No.	Asst. Year	Appellant	Respodent
1-9	422 to 430 /Bang/2019	2013-14	M/s Arowana Consulting Ltd., Fortune Sarayu No.206/193/186/1/30/6 6 th Sector, HSR Layout, Roopen Agrahara, Bengaluru-560 068.	The Dy. Commissioner of Income-tax – CPC – TDS/Income-tax Officer, Ward-1(1) Bengaluru.
10-21	431 to 442 /Bang/2019	2014-15	M/s Arowana Consulting Ltd., Fortune Sarayu No.206/193/186/1/30/6 6 th Sector, HSR Layout, Roopen Agrahara, Bengaluru-560 068.	The Dy. Commissioner of Income-tax – CPC – TDS/Income-tax Officer, Ward-1(1) Bengaluru.
22-29	443 to 446 /Bang/2019 448 to 451/ Bang/2019	2015-16	M/s Arowana Consulting Ltd., Fortune Sarayu No.206/193/186/1/30/6 6 th Sector, HSR Layout, Roopen Agrahara, Bengaluru-560 068.	The Dy. Commissioner of Income-tax – CPC – TDS/Income-tax Officer, Ward-1(1) Bengaluru.

PAN – AADCM 7560 P

Appellant by	:	Shri Prakash Hegde, C.A
Respondent by	:	Dr. P.V Pradeep Kumar, Addl. CIT (DR)

Date of hearing	:	06.08.2019
Date of Pronouncement	:	06.08.2019

ORDER

PER BENCH:-

All these appeals filed by the assessee are directed against the common order dated 07-01-2019 passed by Ld CIT(A)-13, Bengaluru and they relate to the fee levied u/s 234E of the Act for the periods relevant to the assessment years 2013-14, 2014-15 and 2015-16. Since identical issues were urged in these appeals, they were heard together and are being disposed of by this common order, for the sake of convenience.

2. The assessee is aggrieved by the decision of Ld CIT(A) in not condoning the delay in filing appeals before him and further in confirming the fee levied u/s 234E of the Act for all the periods relevant to the above said assessment years.

3. We heard the parties and perused the record. The assessee had deducted tax at source from various payments made by it during the years relevant to assessment years 2013-14, 2014-15 and 2015-16. The assessee is required to file Statement of TDS (TDS returns) on quarterly basis. However, there was delay in filing various quarterly TDS returns. Accordingly, while processing the TDS returns, the fee u/s 234E of the Act was levied in all the TDS returns.

4. The assessee challenged the fee demanded u/s 234E of the Act by filing appeals before Ld CIT(A). The assessee placed its reliance on the decision rendered by Hon'ble Karnataka High Court in the

case of Fatheraj Singhvi vs. UOI (2016)(289 CTR 602). All the appeals came to be filed before Ld CIT(A) belatedly, i.e., after a lapse of 2 to 4 years. The assessee also requested the Ld CIT(A) to condone the delay by mentioning following reason:-

“The communication from TDS CPC has been sent to e-mail id of a staff who was handling the tax matters and the relevant staff has left the company as such the levy of fine u/s 234E has not brought to the notice in time to the management. Hence there is delay in filing the appeal.”

5. The Ld CIT(A) took the view that the decision rendered by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra) cannot be taken support by the assessee by observing as under:-

“.....so the demand became due within 30 days of service of the intimation. However, the appellant did not pay the same; nor did it challenge the levy of the late filing fee. By not paying the demand within the stipulated time the appellant has defied the provision of the Act for which it cannot be rewarded with a relief by relying on the order of the Hon'ble Court which has a prospective effect. Therefore, in view of the judgment in the case of Fatheraj Singhvi vs. UOI (supra), the appeal filed by the appellant is not maintainable.”

6. With regard to the prayer for condonation of delay, the Ld CIT(A) held that it is the duty of the assessee to check the emails and retrieve the intimations sent by TDS CPC. Accordingly he held that the reason cited by the assessee cannot be treated as

“sufficient cause” for filing appeals after a lapse of 2-4 years. Accordingly, by placing reliance on the decision rendered by Hyderabad bench of Tribunal in the case of T.Kishan vs. ACIT (IT(SS)A Nos. 23 & 25 (Hyd) of 2011), he refused to condone the delay and admit the appeals. Accordingly, the Ld CIT(A) dismissed all the appeals.

7. We notice that an identical issue of delay in filing appeals before Ld CIT(A) belatedly came to be considered by this bench in the case of Aviators India P Ltd in ITA No.623/Bang/2019. In the above said case also, the assessee had filed the Statement of TDS through a staff, who had given his personal e-mail Id and had left the job, i.e., identical reason was given for the delay in filing the appeal before the Ld CIT(A). The Tribunal, vide its order dated 31.07.2019, has decided this issue as under:-

“3. We heard the parties and perused the record. This appeal relates to levy of fees u/s 234E of the Act. The assessee has filed the quarterly statement of TDS belatedly and hence fees u/s 234E of the Act was levied for the delay in filing various returns, while processing the Statement of TDS (TDS returns).

4. The assessee filed the appeal challenging the levy of fee u/s 234E of the Act, but the same was dismissed by the ld CIT(A) on the ground that the appeal is barred by limitation by 457 days. Hence, the assessee has filed this appeal before us.

5. The ld AR submitted that the assessee did not receive any notice of demand from the Income-tax Department physically and hence the assessee was not aware of the

demand raised upon it. The assessee came to know of the demand raised u/s 234E of the Act, only when it verified the details of outstanding demand in the Income-tax Site (TRACES portal). Upon noticing the same the assessee has filed the appeal before the ld CIT(A).

6. The ld AR further submitted that the task of filing TDS returns was entrusted to a staff named Shri Deen dayal and the assessee has noticed that the said staff has registered his email.id with the Income-tax department at the time of uploading of TDS returns. He submitted that the Ld CIT(A) has noticed that the notice of demand has been sent to the e-mail ID registered with the department and hence he did not agree with the submissions of the assessee for the delay in filing the appeal.

7. However, it was noticed by the assessee that the intimation has been sent to the email.id of the above said staff and he did not inform about the same to the assessee. The Ld A.R further submitted that the above said staff has resigned from the services of the assessee company on 19/9/2006. Accordingly the ld AR submitted that there was reasonable cause in filing the appeal belatedly before the ld CIT(A) and accordingly submitted that the ld CIT(A) was not justified in refusing to condone the delay.

8. On the contrary, the ld DR submitted that the assessee has been filing TDS returns regularly and hence it could have very well ascertained the outstanding demand by verifying TRACES portal of Income-tax Department. Accordingly the ld DR submitted that there was no reasonable cause for the

assessee in filing the appeal belatedly before the CIT(A) and he was justified in refusing to condone the delay in filing the appeal.

9. *We noticed that there is no dispute with regard to the fact that the "emai.id" registered with the Income-tax Department is that of the employee of the assessee named Shri Deen dayal. It is stated that the above said staff has resigned from the services of the assessee company in September 2016. It is the submission of the assessee that the above said staff did not intimate about the demand raised while processing the TDS statement. Admittedly, the assessee could not have access to the e-mail of the staff. It is the submission of the assessee that it came to know about the demand only when it verified the TRACES portal. Accordingly it has filed the appeal immediately before the ld CIT(A) by quoting the date of mailing of intimation to the staff, which has resulted in delay in filing the appeal before Ld CIT(A). In our view, the above said explanations furnished by the assessee constitutes reasonable cause for the delay in filing appeal before the ld CIT(A). Accordingly we are of the view that the ld CIT(A) was not justified in refusing to condone the delay.*

10. *In view of the foregoing discussions, we condone the delay in filing appeal before the ld CT(A). Since the ld CIT(A) has not adjudicated the issues on merits, we deem it proper to restore this appeal to his file for adjudicating the issues on merits."*

8. In the instant cases, we have noticed that the assessee has given identical reasoning for the delay in filing appeals before Ld CIT(A). However, it is not clear as to whether the assessee has furnished any material to support its claim. We also notice that the Ld CIT(A) has rejected the submissions of the assessee without critically examining it. Before us, the Ld A.R placed his reliance on the decision rendered by the co-ordinate bench in the case of Smt. Veena Somani (ITA No.2822 & 2823/Bang/2018 dated 04-06-2019), wherein the Tribunal had condoned the delay by following the decision rendered by Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst Katiji and Others (1987)(167 ITR 471)(SC). Accordingly he prayed that the delay in filing appeals before Ld CIT(A) may be condoned.

9. We have noticed that the Ld CIT(A) has refused to condone the delay without critically examining the explanations furnished by the assessee. We have also noticed that it is clear as to whether the assessee has furnished any material in support of its submissions. We have also extracted the order passed by the Tribunal on identical set of facts, wherein the assessee had furnished the supporting materials. Under these set of facts, we are of the view that the matter relating to condonation of delay requires fresh examination at the end of the Ld CIT(A).

10. We notice that the Ld CIT(A) has expressed the view that the decision rendered by Hon'ble Karnataka High Court in the case of FATHERAJ SINGHVI (supra) shall have prospective effect and the assessee's appeals are not maintainable as per the decision

rendered in the above said case. The Ld A.R submitted that the interpretation given by Ld CIT(A) may not be correct. On going through the observations of the first appellate authority, we are of the view that the interpretation given by him is not correct. However, since we are restoring this issue of condonation of delay to his file, we deem it proper to restore the arguments advanced on merits also to his file. Accordingly we set aside the orders passed by Ld CIT(A) and restore all the issues to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

11. In the result, all the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the Open Court on **6th August, 2019.**

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, 6th August, 2019.

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
Dictation note enclosed
8. Date on which the file goes to the Bench Clerk
.....
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order