

आयकर आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.2540 to 2576/Chny/2019
निर्धारण वर्ष /Assessment Years: 2009-10 to 2019-20

M/s. Bharathi Rajaa Hospital & Research Centre Pvt. Ltd.,
No.20, G.N. Chetty Road,
T.Nagar, Chennai – 600 017.

Vs. The ACIT,
CPC,
TDS Centralized Processing Cell,
Aayakar Bhavan, Sector – 3,
Ghaziabad – 201 010.

PAN: AACCB 2146F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri N. Arjun Raj, CA for
Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से /Respondent by : Shri AR.V. Sreenivasan, JCIT
सुनवाई की तारीख/Date of Hearing : 21.11.2019
घोषणा की तारीख /Date of Pronouncement : 05.12.2019

आदेश / ORDER

PER BENCH:

The assessee filed the above 37 appeals against the consolidated order passed by the Commissioner of Income Tax (Appeals)-17, Chennai in ITA Nos.523 to 557/18-19 & 09&10/19-20 dated 25.07.2019 for the assessment years 2009-10 to 2019-20.

2. M/s. Bharathi Rajaa Hospital & Research Centre Pvt. Ltd., the assessee, filed 37 appeals on 25/26.03.19 & 02.04.19, belatedly, varying from 172 days delay to 2099 days of delay in filing the appeals, against the orders passed by the CPC, Bangalore U/ss. 200A, 201(1A) and 154 for the assessment years 2009-10 to 2019-20 on various dates in January & February, 2011, January & December 2013, July 2014, March 2015, June, July and October 2016, February, April, May and June 2017, May, September and October 2018. The Managing Director and Chairman of the assessee filed an affidavit for each of the appeal pleading, inter-alia, that the impugned orders were received electronically. The accounts department did not communicate the impact of those orders for appropriate action within the prescribed limitation period which resulted in the delay in filing these appeals, he was not conversant as well as not comfortable with the e-proceedings at the said point of time. When the recovery notice dated 25.02.2019 was received electronically, the issue was brought to his notice by the accounts department and the mistake of not challenging the impugned orders was addressed immediately by filing the appeals. Therefore, he pleaded that the delay in filing each of these appeals is not deliberate but for bonafide reason which was beyond his control and hence

prayed for condoning the delay in filing each of these appeals and decide them on the merits and render justice. However, the Id.CIT(A) dismissed all the appeals, holding that the assessee did not bring any material in support of its reasons. Aggrieved against the orders of the Id.CIT(A), the assessee filed these 37 appeals.

3. The Id.AR submitted that the Id.CIT(A) dismissed the impugned appeals without giving proper opportunity to the assessee and without assigning proper reasons and justification, on technical ground, which is wholly unjustified and untenable. Inviting our attention to the reason cited by the assessee, the Id.AR submitted that the assessee, inter-alia, explained that how it was unaware of the change from the conventional system of service to e-system of service of the impugned orders and when the recovery notice dated 25.02.2019 was electronically received, it came to know the issues and immediately assessee took steps in filing these appeals and therefore sought condonation of delay in filing these appeals and prayed the Id.CIT(A) to decide them on merit and render justice. Though the impugned orders were passed and electronically served from 2011 onwards, the Revenue has brought anything on record that it took steps to collect

any of the impugned demand before 25.02.2019 and to say that the assessee was aware of the impugned orders / demands. The Id.AR relying on the Hon'ble Apex Court decision in the case of Senior Bhosale Estate (HUF) vs. ACIT in Civil Appeal Nos.6671 – 6676 of 2010 with 6677-6690 of 2010 dated 07.11.2019, prayed that the delay in filing each of the above appeals be condoned and they may be directed to be decided on merits and due justice be rendered to the assessee.

4. Per contra, the Id. DR supported the orders of the Id.CIT(A) and relied on the decision of the Hon'ble Bombay High Court in the case of M/s. Alfa Properties & Investments P. Ltd., vs. Deputy Commissioner of Income Tax 9(1), in ITA (L) No.681 of 2018 dated 13.07.2018. The Id.DR invited our attention to para 10 of the notification No.3/2013 (F.No.142/39/2012 – SO[TPL]) dt. 15.01.2013 issued by CBDT on centralized processing of statements of TDS, 2013, which is extracted as under:-

Service of notice or communication

10. (1) The service of a notice or order or intimation or any other communication by the Cell may be made by delivering or transmitting a copy thereof to the deductor,-

(a) by electronic mail; or

(b) by placing such copy in the registered electronic account of the deductor on the portal of the Cell; or

(c) by any mode mentioned in sub-section (1) of section 282 of the Act.

(2) The date of posting of any communication under sub-paragraph (1) in the electronic mail or electronic account of the deductor in the portal of the Cell shall be deemed to be the date of service of such communication.

(3) The intimation, orders and notices shall be computer generated and need not carry physical signature of the person issuing it.

Relying on the above, the Id.DR submitted that the date on which a copy of the impugned order (s) was/ were transmitted to the deductor (the assessee) , it shall be deemed to be the date of service of such communication and accordingly, the Id DR supported the orders of the Id.CIT(A).

5. We heard the rival submissions and gone through the relevant material. In these appeals, the assessee pleads that the impugned electronic communications were not brought to the notice of the Managing Director and Chairman, the assessee, and he himself was not conversant as well as not comfortable with the e-proceeding at the said point of time. When the recovery notice dated 25.02.2019 was received, electronically, the issues were brought to his notice and he

immediately took steps to file the above appeals, which caused the delay in filing each of these appeals, which is not deliberate but bonafide and beyond his control and therefore, he sought the condonation of delay in respect of each of these appeals. It was also pleaded that though the impugned orders were passed from 2009 to 2019, till the recovery notice served, electronically on 25.02.2019, the Revenue had not sent any other communication in respect of any of the demand raised in the impugned orders. Therefore, it is pleaded that the reason canvassed by the assessee towards the delay in filing these appeals have sufficient and reasonable cause and hence, it was prayed to condone the delay in filing each of these appeals. We find that the reason canvassed by the assessee towards the delay in filing the impugned appeals appears reasonable and sufficient and hence, we condone the delay in filing each of these appeals and remit these appeals back to the Id.CIT(A) for deciding each of them on merits after affording effective opportunity to the assessee.

6. Further, it is clear from the above that the CPC was processing the orders from January, 2011 onwards. However, the CBDT issued the above notification on 15.01. 2013 only which indicates that there

were gaps between the manual system and the electronic system which required proper administration and hence, the CBDT addressed such problems through the impugned notification. Though, the Revenue claimed to have served the impugned orders electronically, the assessee pleads that they were not brought to its notice and the Revenue has not sent any further communication till the date of recovery notice served on 25.02.2019 electronically. Therefore, the assessee was unaware of such orders. Even, if the above notification is applied, the orders passed by the CPC, prior to this date, that is those orders passed from Jan 2011 to Dec2013 should have been served on the assessee by any of the mode mentioned in sub-section (1) to Section 282 of the Act, which, apparently, has not been done by the Revenue, as it has not placed any such material before us. Further, when there is a change from one system, say the manual system to the other system, say the electronic system , apart from relying the rules and regulations, the Revenue as an administrator of the Act must also guide the assessees, in enabling them to comply with the systemic changes in a reasonable manner. Atleast in those cases, like this case, where the demand made on the assessee is pending for long time and the assessee has not responded, the

Revenue should also have used other mode of communication. In this case, the Revenue has not brought any such communication with the assessee. Considering the totality of the facts and circumstances, the reason canvassed by the assessee towards the delay in filing the impugned appeals appears reasonable and sufficient and hence, we condone the delay in filing each of these appeals and remit these appeals back to the Id.CIT(A) for deciding each of them on merits after affording effective opportunity to the assessee.

7. In the result, all the above appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the Court on 5th December, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 5th December, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(एस जयरामन)
(S. Jayaraman)

लेखा सदस्य /Accountant Member