

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA Nos. 1137 to 1140/Mum/2018
(Assessment Year: 2014-15)**

M/s. MICM Net Solutions Pvt. Ltd.,
5/6 Azad Nagar Shopping Centre,
1st Floor, Station Road, Goregaon (W),
Mumbai-400062.

ACIT, CPC, TDS, Aaykar Bhavan, Sector-3,
Vaishali, Ghaziabad, Ghaziabad,U.P-201010.
Vs.

PAN : AABCM9968M

(Appellant)

(Respondent)

Appellant by : Shri Bharat P.Shah, AR

Respondent by : Smt. Jothi Lakshmi Nayak, DR

Date of Hearing: 11.12.2019

Date of Pronouncement: 18.12.2019

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-59, Mumbai, dated 20/12/2017, which in turn arises from the respective intimations issued by the Centralized Processing Cell – TDS (for short, CPC) u/s. 200A of the Income-tax Act, 1961 (for short, the ‘Act’) for the respective four quarters pertaining to A.Y 2014-15. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y 2014-15 in ITA No. 1137/Mum/2018 against the impugned order passed by the CIT(A), which in turn arises from the intimation issued by the CPC-TDS, Ghaziabad for the 3rd quarter of the aforementioned assessment year under consideration. The assessee has assailed the impugned order on the following grounds of appeal before us :-

“1. Whether on facts and in law Commissioner of Income Tax Appeals is correct in holding that delay in filing the appeal is non-condonable when service of penalty order by electronic mode on 02/07/2014 for 26Q Q3 itself is not valid because service of notice, order, etc by electronic mode has been validated by insertion of Rule 127 of Income Tax Rules w.e.f. 2nd December, 2015 only.

2. The levy of late filing fees u/s 234E for delay in filing the TDS statements cannot be levied before 1st June, 2015 since there was no enabling provision for raising such demand of late filing of statement before 1st June, 2015.

3. Moreover the Commissioner of Income Tax Appeals has dismissed our appeal on the grounds that delay in filing appeal is non condonable. However as mentioned by CPC in their letter dated 18.09.2017 to the Commissioner of Income Tax Appeals that, this statement has undergone reprocessing due to change in processing logic of calculating the late payment interest. With the result of this reprocessing, demand of late payment interest reduced for this statement and intimation was regenerated and served on registered email (accounts@micmindia.com, micmnet@gmail.com) of deductor. It suggests that reprocess is due to some error on the part of CPC and not because of assessee's mistake. So the appeal filed on 29.12.2016 against reprocessed order received by assessee on 05.12.2016 should be considered in time.”

2. Briefly stated, the assessee company had filed its TDS return for the 3rd quarter in 'Form 24Q' on 27-06-2014. As claimed by the assessee, the intimation under Sec. 200A of the Act, was received by it from the CPC-TDS only on 05-12-2016. In the backdrop of the aforesaid claim, it was submitted by the assessee that as the aforesaid intimation u/s 200A could have been issued latest by 31-03-2016, therefore, the same having been issued by CPC-TDS on 05.12.2016 was beyond the limitation period prescribed in the *proviso* to Sec. 200A(1) of the Act. In sum and substance, it was the claim of the assessee that as the impugned intimation could have been passed latest by 31-03-2016, therefore, the same having been issued by the CPC-TDS on 05.12.2016 was barred by limitation.

3. As the aforesaid claim of the assessee did not inspire much of confidence, therefore, the CIT(A) carried out necessary verifications from the CPC-TDS. On the basis of verifications, it was gathered by the CIT(A) that the CPC-TDS had as on 02.07.2014 processed the aforesaid TDS return for the 3rd quarter that was filed by the assessee in "Form 24Q" on 27.06.2014. Also, it was informed by the CPC-TDS that an intimation No. TDS/1314/24Q/D/100010279378 was sent to the assessee on the same date, wherein a demand of Rs. 32,600/- was raised on

the assessee for late filing of the aforesaid TDS return. Accordingly, it was conveyed by the CPC-TDS, that the aforesaid regular statement filed by the assessee was processed within the statutory time limit envisaged in Sec. 200A(1) of the Act. Also, the CIT(A) was informed by the CPC-TDS that the intimation u/s. 200A was served/dropped well within the stipulated time period at the registered e-mail address/e-mail ids of the assessee viz. accounts@micmindia.com and micmnet@gmail.com. It was further conveyed that the intimation under Sec. 200A of the original processing was served/dropped at micmnet@gmail.com, i.e the e-mail address that was provided by the assessee deductor while registering with the CPC-TDS, and on which the activation link was sent. The aforesaid information so gathered was forwarded by the CIT(A) to the assessee for its counter comments. In reply, the assessee rebutted the claim of the CPC-TDS that it had processed the TDS return of the assessee on 02.07.2104, and submitted that it had not received any such intimation u/s 200A from the CPC-TDS. In order to support its aforesaid claim, an undated 'affidavit' signed by the director of the assessee company was filed. Apart therefrom, it was the claim of the assessee that as per Rule 127 of the Income-tax Rules, 1962, the electronic intimation of an order was valid only after 01-04-2015. Alternatively, it was submitted by the assessee that if the appeal filed by the assessee was to be considered as having been filed beyond the stipulated time period, then the delay therein involved may be condoned. However, the CIT(A) was not persuaded to subscribe to the aforesaid contentions of the assessee. It was observed by the CIT(A) that not only the impugned intimation u/s. 200A was passed by the CPC-TDS within the stipulated time period permitted by the statute, but was also sent/forwarded to the assessee on the same day at its registered e-mail address. In fact, it was observed by the Id. CIT(A) that the assessee had never stated that it had not received the said intimation at its e-mail address. On the basis of aforesaid facts, the CIT(A) was of the view that the intimation challenged by the assessee was duly served upon the assessee at its registered e-mail address. It was further observed by him, that the intimation u/s 200A of the original processing of the TDS return was sent by the CPC-TDS at the e-mail address that was furnished and got registered by the assessee with the CPC-TDS. Observing, that it was not the case of the assessee that the CPC-TDS had dropped/served the intimation u/s 200A at some random e-mail id/address of the tax deductor, the CIT(A) was of the view that the assessee as per its convenience could not be permitted to

disclaim the electronic procedure of service of the order. On the basis of the aforesaid facts, the CIT(A) was of the view that as the intimation under Sec. 200A was delivered and transmitted at the registered e-mail address that was provided by the assessee at the time of registration with TRACES, therefore, it was incorrect on its part to canvass that there was a contravention of Rule 127. Also, the CIT(A) was not inclined to accept the claim of the assessee that some 'error' might have occurred on the part of CPC-TDS due to change of processing logic. As observed by the CIT(A), the CPC-TDS vide its letter dated 18-09-2017, had clearly stated that reprocessing due to change in the processing logic was an event that had occurred posterior to the sending of the impugned intimation to the assessee on July 07, 2014. On the basis of the aforesaid facts, the CIT(A) concluded that the delay involved in the appeal filed by the assessee was to be reckoned from the date of passing/serving of the earlier order of intimation. It was further observed by the CIT(A), that though the assessee had filed the appeal manually on 26-12-2016, however, the same was rejected by a separate order dated 13-06-2017, since the appeal was filed after March 01, 2016, which was the date from which all appeals were mandated to be compulsorily filed in electronic form. Observing, that the transitory period for filing of appeals in electronic form had though commenced from March 01, 2016, however, as the same had resulted to certain difficulties to the assessee's, therefore, the CBDT, vide its Circular No. 20/2016, dated 26-05-2016 had extended the time available for e-filing of appeals till 15-05-2016, the CIT(A) was thus of the view that the delay involved in filing of the appeal was to be worked out from the date on which the assessee was ready with its appeal. Accordingly, the CIT(A) observed that the appeal filed by the assessee involved a delay of 848 days, as under:-

24Q-Qtr.3 FY 2013-14

(a) date of filing of Statement	:	27.06.2014
(b) date of Intimation as per CPC-TDS and sending it electronically	:	02-07-2014
(c) due date for appeal filing	:	01.08.2014
(c) date of filing of appeal	:	26.12.2016 (Manual)
(d) date of filing of appeal	:	28.12.2016 (e-filing)
(e) delay in filing appeal (in days)	:	848

4. It was observed by the CIT(A) that the aforesaid period of delay of 848 days was not an insignificant period, and in fact was an inordinate delay that was involved in filing of the appeal

by the assessee. Observing, that the assessee was not entitled for condonation of delay as a matter of right and had to establish the existence of a reasonable cause as a condition precedent for condonation of the delay involved in filing of the appeal, the CIT(A) holding a conviction that as the assessee had failed to provide any plausible reason which had lead to the aforesaid delay in the filing of the appeal, thus declined to condone the same in exercise of the powers vested with him u/s. 249(3) of the Act. Accordingly, on the basis of his aforesaid observations, the CIT(A) dismissed the appeal of assessee. The assessee being aggrieved with the impugned order of the CIT(A) has carried the matter in appeal before us.

5. It was submitted by the Learned Authorised Representative (for short, the A.R) for the assessee, that the impugned delay had occurred for the reason that the assessee had failed to check its e-mail account where the aforesaid intimation u/s 200A was dropped by the CPC-TDS. In the backdrop of his aforesaid contention, it was submitted by the Id. A.R that the delay involved in the filing of the present appeal be condoned and the matter be restored to the file of the CIT(A), with a direction to readjudicate the issue on merits. It was submitted by the Id. A.R that as the delivery of notices/orders by e-mail had started in and around the year 2014, therefore, the assessee was not conversant with the same. In sum and substance, the Id. A.R in its attempt to justify/explain the delay involved in filing of the present appeal, submitted, that the same was attributable to the reason that the assessee had failed to check its e-mail box at the relevant point of time. In support of the aforesaid claim, the assessee company had filed an 'affidavit', dated 23-07-2019. Also, the Id. A.R has relied on the judgment of the Hon'ble Supreme Court in the case of Senior Bhosale Estate (HUF) vs. ACIT in [Civil Appeal Nos. 6677-6690 of 2010, dt. 16-11-2019] and the order of a co-ordinate bench of the Tribunal viz. , ITAT, Delhi Bench, "D" in the case of Jakson Ltd Vs. ACIT, C.C-25, New Delhi [ITA No. 6432/Del/2014, dated. 27-09-2018].

6. Per Contra, the Id. DR relied on the order of the CIT(A). It was submitted by the Id. D.R, that as an inordinate delay of 848 days was involved in filing of the present appeal by the assessee, therefore, the same may not be condoned. It was averred by the Id. D.R, that the CIT(A) considering the inordinate delay involved in filing of the appeal had rightly declined to exercise his powers u/s 249(3) and therein condone the delay therein involved. Apart

therefrom, it was submitted by the Id. D.R that the assessee had before the lower authorities tried to wriggle out of the aforesaid delay in filing the appeal by shifting the blame on the department, and fallaciously claiming that the intimation u/s. 200A issued by the CPC-TDS was beyond the prescribed time limit. It was submitted by the Id. D.R, that it was only when the assessee found itself to be cornered on being confronted with the fact that the aforesaid intimation was duly served/issued by the CPC-TDS at the registered e-mail address which was provided by it, that the assessee had only thereafter admitted of having received the aforesaid intimation. On the basis of the aforesaid facts, it was submitted by the Id. D.R that as the assessee had not come up with the correct facts before the lower authorities, therefore, even on the said count the inordinate delay involved in filing of the appeal before the CIT(A) did not merit to be condoned.

7. We have heard the authorised representatives for both the parties and perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As is discernible from the orders of the lower authorities, the appeal against the intimation issued u/s. 200A by the CPC-TDS was to be filed by the assessee latest by 01-08-2014. As the assessee had manually filed its appeal on 22-12-2016, therefore, on an objection conveyed by the office of the CIT(A) that it was mandatory on its part to file the appeal electronically, the assessee had thereafter electronically filed the same on 29-12-2016. On a perusal of the order of the CIT(A), we find that the latter had observed that considering the initial difficulties which were faced by the assesses in the transitory period, wherein filing of appeals in electronic form was made compulsory, the CBDT had vide its Circular No. 20/2016, dated 26-05-2016 extended the time available for e-filing of appeals till 15-05-2016. Accordingly, the CIT(A) had in all fairness worked out the period of delay involved in filing of the impugned appeal upto the date on which the appeal was manually filed by the assessee. As such, a delay of 848 days had emerged in filing of the appeal by the assessee for the "Qtr-3" of the year under consideration. As the CIT(A) was of the view that an inordinate delay was involved in filing of the appeal by the assessee before him, therefore, in the absence of any plausible explanation forthcoming from the assessee as regards the reason leading to the said delay, he declined to condone the same.

8. We have given a thoughtful consideration to the facts of the case and are unable to persuade ourselves to subscribe to the contentions advanced by the Id. A.R that as the delay involved in the present appeal had occurred for bonafide reasons, therefore, the CIT(A) was in error in declining to condone the same. On a perusal of the order of the CIT(A), we find that the assessee initially had not come up with the correct state of facts and in fact had tried to mislead the department by claiming that no intimation u/s. 200A was served upon it by the CPC-TDS. Rather, on the basis of aforesaid wrong claim the assessee had even sought a quashing of the aforesaid intimation u/s 200A that was duly served upon it by the CPC-TDS, on the ground, that the same having been issued beyond the prescribed period contemplated in the *proviso* to section 200(1A) was barred by limitation. We find that it was only when the assessee was cornered with the fact that the intimation u/s. 200A was duly served upon it by the CPC-TDS at its registered e-mail address, that it was only then that it had for the very first time sought condonation of the delay involved in filing the appeal before the CIT(A). We are of a strong conviction that not only the appeal filed by the assessee involves an inordinate delay of 848 days, but even otherwise, the conduct of the assessee who had not come up with clean hands and correct facts before the CIT(A) does not inspire any confidence as regards its bonafides in respect of the reasons leading to the delay involved in filing of the appeal before the first appellate authority. Accordingly, finding no infirmity in the view taken by the Id. CIT(A), who in our considered view had rightly declined to condone the delay involved in filing of the appeal by the assessee, we uphold his order.

9. The appeal of assessee (ITA No. 1137/Mum/2018 for the A.Y 2014-15) is dismissed.

ITA Nos. 1138 to 1140/Mum/2018

A.Y 2014-15 (Qtr 1 to 3)

10. As the facts and the issue involved in the aforesaid appeals of assessee remain the same as were there before us in its appeal for A.Y 2014-15 (“Qtr-3”) in ITA No. 1137/Mum/2018 ,therefore, our view and observations therein recorded shall apply *mutatis mutandis* for the disposal of the aforesaid appeals. Accordingly, we uphold the order of the CIT(A) in the captioned appeals.

11. Resultantly, all the appeals filed by the assessee are dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 18.12.2019

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 18.12.2019

**PP, SPS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //Tue Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai