

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.2730/Bang/2018  
(Assessment Year: 2013-14)

M/s. Aviators India Pvt. Ltd.,  
No.1309, Brigade Towers,  
Brigade Road, Bengaluru – 560 025  
PAN AABCA 4499H

....Appellant

Vs.

Dy. Commissioner of Income Tax,  
CPC (TDS), Ghaziabad.

.....Respondent.

Assessee By:	Shri Shreehari Kusta, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	11.12.2019
Date of Pronouncement :	31.12.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax-3, Bangalore passed under Section 200A and 250 of the Income Tax Act, 1961 ('the Act').

2. At the time of hearing, the learned Authorised Representative submitted that the CIT(Appeals) has not condoned the delay in filing the appeal though the

assessee has filed the condonation petition. The contention of the learned Authorised Representative that in assessee's own case for the Assessment Year 2016-17, the Tribunal has condoned the delay on the same set of facts and restored the matter to the file of CIT(Appeals) for adjudication on merits and placed copy of order and prayed for allowing the appeal of the assessee. Contra, the Id. DR supported the orders of CIT(Appeals).

3. We heard the rival contentions and perused the material on record. Prima facie, the learned Authorised Representative has argued only on the non-condonation of delay by the CIT(Appeals) and the appeal was dismissed without condoning the delay. In the course of hearing the learned Authorised Representative submitted that the present Assessment Year 2013-14 whereas in assessee's own case for the Assessment Year 2016-17 the facts are similar and the Tribunal has considered the facts and circumstances of the case with respect to e-mail ID and other details for processing the TDS Certificate. The learned Authorised Representative demonstrated in Paper Book with petition for condonation of delay and also relieving letter of the employee at page 1 to 5 and also referred to Tribunal order in ITA No.623/Bang/2019 for the Assessment Year 2016-17 dt.31.7.2019 at page 2 paras 3 to 11 read 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 Id 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 Id 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 Id CIT(A).

6. The Id 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 Id AR submitted that there was reasonable cause in filing the appeal belatedly before the Id CIT(A) and accordingly submitted that the Id CIT(A) was not justified in refusing to condone the delay.

8. On the contrary, the Id 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 Id 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 Id 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 Id CIT(A). Accordingly we are of the view that the Id 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 Id CT(A). Since the Id 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.

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

We respectfully following the judicial precedence and the facts in the present case are similar to the facts considered by the Tribunal in assessee's own case for the Assessment Year 2016-17 and restored the entire disputed issue to the file of CIT(Appeals) for adjudication on merits. The assessee should also be provided adequate opportunity of hearing and shall co-operate in submitting the information for early disposal of the appeal.

4. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 31st Dec., 2019.

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 31.12.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore