

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH: CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एम बाला गणेश, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**  
**AND**  
**SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

| आयकर अपील सं./ITA Nos. | निर्धारण वर्ष /Assessment Years |
|------------------------|---------------------------------|
| 2173/Chny/2019         | 2013-14                         |
| 2174/Chny/2019         | 2013-14                         |
| 2175/Chny/2019         | 2013-14                         |
| 2176/Chny/2019         | 2013-14                         |
| 2177/Chny/2019         | 2014-15                         |
| 2178/Chny/2019         | 2014-15                         |
| 2179/Chny/2019         | 2014-15                         |
| 2180/Chny/2019         | 2014-15                         |
| 2181/Chny/2019         | 2015-16                         |
| 2182/Chny/2019         | 2015-16                         |
| 2183/Chny/2019         | 2015-16                         |
| 2184/Chny/2019         | 2015-16                         |
| 2185/Chny/2019         | 2015-16                         |
| 2186/Chny/2019         | 2016-17                         |
| 2187/Chny/2019         | 2014-15                         |

M/s. Indira Educational and Charitable  
Trust,  
No.19, Govindan Street,  
Ayyavoo Colony, Aminjikarai,  
Chennai – 600 029.

The Asst. Commissioner of  
Income Tax,  
**Vs.** Centralized Processing Cell  
(TDS), Ghaziabad.

**[PAN: AAATI 3027K]**

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Assessee by : Ms. Nitya Sankaran, C.A  
प्रत्यर्थी की ओर से /Revenue by : Mrs. Vijayaprabha, JCIT  
सुनवाई की तारीख/Date of Hearing : 26.02.2020  
घोषणा की तारीख /Date of Pronouncement : 26.02.2020

**आदेश / ORDER**

**PER BENCH:**

In all these appeals of the assessee, the first common issue is as regards to the order of CIT(A) not condoning the delay in filing of these appeals before him. The facts and circumstances are identical in all the appeals, hence, the grounds raised in all the years are being reproduced from ITA No. 2173/Chny/ 2019 for assessment year 2013-14:

*“1. For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*

*2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.*

*3. For that the Commissioner of Income Tax (Appeals) erred in not condoning the delay in filing the appeal before him.*

*4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had sufficient reasonable cause for the delay in filing the appeal before him.*

*5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant could have derived no benefit by filing the appeal belatedly and that the same could not have been the intent of the appellant.*

*6. For that the Commissioner of Income Tax (Appeals) failed to appreciate that fees u/s.234E is not leviable in the facts and circumstances of the case.*

*7. For that the Commissioner of income tax (Appeals) failed to appreciate that the appellant has duly discharged its obligations in respect of deduction of tax at source.*

*8. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the levy of fee u/s.234E through section 200A is made applicable only from 01.06.2015.*

*9. For that without prejudice to the above, the delay in filing TDS returns was due to circumstances beyond the control of the appellant.”*

2. Before us the Ld. Counsel for the assessee filed chart indicating the total delay in each of the appeal and the relevant chart is being reproduced as under:

|   | <b>1</b>       | <b>2</b>       | <b>3</b>       | <b>4</b>       |
|---|----------------|----------------|----------------|----------------|
| ITA No.   | 2173/Chny/2019 | 2174/Chny/2019 | 2175/Chny/2019 | 2176/Chny/2019 |
| A.Y and Quarter   | 2013-14(Q2)    | 2013-14(Q3)    | 2013-14(Q4)    | 2013-14(Q4)    |
| Particulars   | Form 26Q       | Form 26Q       | Form 26Q       | Form 26Q       |
| Date of (receipt of) intimation u/s. 200A                       | 11.12.2013     | 11.12.2013     | 25.12.2013     | 11.12.2013     |
| Date of order u/s. 154  | 25.06.2016     | 25.06.2016     | 25.06.2016     | 25.06.2016     |
| Date of filing CIT(A) appeal against order u/s. 154             | 09.06.2018     | 09.06.2018     | 09.06.2018     | 09.06.2018     |
| Date of CIT(A) order against 154 appeal                         | 27.06.2018     | 27.06.2018     | 27.06.2018     | 27.06.2018     |
| Date of filing appeal before ITAT against CIT(A) order          | 27.08.2018     | 27.08.2018     | 27.08.2018     | 27.08.2018     |
| Date of ITAT hearing  | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of withdrawal of appeal before ITAT                        | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of filing appeal before CIT(A) against intimation u/s 200A | 28.02.2019     | 28.02.2019     | 28.02.2019     | 28.02.2019     |
| Date of CIT(A) order against 200A appeal                        | 20.05.2019     | 20.05.2019     | 20.05.2019     | 20.05.2019     |
| No. of days delay in filing appeal against 200A intimation      | 1876           | 1876           | 1876           | 1876           |

**ITA Nos.2173 to 2187/Chny/2019 (A.Y 2013-14 to 2016-17)  
M/s. Indira Educational and charitable Trust**

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|   | 5              | 6              | 7              | 8              | 9              |
|---|----------------|----------------|----------------|----------------|----------------|
| ITA No.   | 2177/Chny/2019 | 2178/Chny/2019 | 2179/Chny/2019 | 2180/Chny/2019 | 2187/Chny/2019 |
| A.Y and Quarter   | 2014-15(Q1)    | 2014-15(Q2)    | 2014-15(Q3)    | 2014-15(Q4)    | 2014-15(Q4)    |
| Particulars   | Form 26Q       | Form 26Q       | Form 26Q       | Form 24Q       | Form 26Q       |
| Date of (receipt of) intimation u/s. 200A                       | 29.07.2014     | 29.07.2014     | 29.07.2014     | 29.07.2014     | 26.07.2014     |
| Date of order u/s. 154  | 02.07.2016     | 02.07.2016     | 02.07.2016     | 02.07.2016     | 02.07.2016     |
| Date of filing CIT(A) appeal against order u/s. 154             | 11.06.2018     | 11.06.2018     | 11.06.2018     | 11.06.2018     | 11.06.2018     |
| Date of CIT(A) order against 154 appeal                         | 27.06.2018     | 27.06.2018     | 27.06.2018     | 27.06.2018     | 27.06.2018     |
| Date of filing appeal before ITAT against CIT(A) order          | 27.08.2018     | 27.08.2018     | 27.08.2018     | 27.08.2018     | 27.08.2018     |
| Date of ITAT hearing  | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of withdrawal of appeal before ITAT                        | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of filing appeal before CIT(A) against intimation u/s 200A | 28.02.2019     | 28.02.2019     | 28.02.2019     | 28.02.2019     | 01.03.2019     |
| Date of CIT(A) order against 200A appeal                        | 20.05.2019     | 20.05.2019     | 20.05.2019     | 20.05.2019     | 20.05.2019     |
| No. of days delay in filing appeal against 200A intimation      | 1646           | 1646           | 1646           | 1646           | 1650           |

**ITA Nos.2173 to 2187/Chny/2019 (A.Y 2013-14 to 2016-17)  
M/s. Indira Educational and charitable Trust**

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|   | <b>10</b>      | <b>11</b>      | <b>12</b>      | <b>12</b>      | <b>14</b>      |
|---|----------------|----------------|----------------|----------------|----------------|
| ITA No.   | 2181/Chny/2019 | 2182/Chny/2019 | 2183/Chny/2019 | 2185/Chny/2019 | 2184/Chny/2019 |
| A.Y and Quarter   | 2015-16(Q1)    | 2015-16(Q2)    | 2015-16(Q3)    | 2015-16(Q4)    | 2015-16(Q4)    |
| Particulars   | Form 26Q       | Form 26Q       | Form 26Q       | Form 24Q       | Form 26Q       |
| Date of (receipt of) intimation u/s. 200A                       | 23.06.2015     | 23.06.2015     | 26.06.2015     | 05.10.2015     | 07.08.2015     |
| Date of order u/s. 154  | 26.06.2016     | 25.06.2016     | 30.04.2016     | 02.07.2016     | 20.06.2016     |
| Date of filing CIT(A) appeal against order u/s. 154             | 11.06.2018     | 11.06.2018     | 11.06.2018     | 11.06.2018     | 11.06.2018     |
| Date of CIT(A) order against 154 appeal                         | 27.06.2018     | 27.06.2018     | 27.06.2018     | 27.06.2018     | 27.06.2018     |
| Date of filing appeal before ITAT against CIT(A) order          | 27.08.2018     | 27.08.2018     | 27.08.2018     | 27.08.2018     | 27.08.2018     |
| Date of ITAT hearing  | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of withdrawal of appeal before ITAT                        | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     | 08.01.2019     |
| Date of filing appeal before CIT(A) against intimation u/s 200A | 01.03.2019     | 01.03.2019     | 01.03.2019     | 01.03.2019     | 01.03.2019     |
| Date of CIT(A) order against 200A appeal                        | 20.05.2019     | 20.05.2019     | 20.05.2019     | 20.05.2019     | 20.05.2019     |
| No. of days delay in filing appeal against 200A intimation      | 1319           | 1319           | 1316           | 1214           | 1273           |

|   | <b>15</b>      |
|---|----------------|
| ITA No.   | 2186/Chny/2019 |
| A.Y and Quarter   | 2016-17(Q1)    |
| Particulars   | Form 26Q       |
| Date of (receipt of) intimation u/s. 200A                       | 30.10.2015     |
| Date of order u/s. 154  | 24.06.2016     |
| Date of filing CIT(A) appeal against order u/s. 154             | 19.09.2017     |
| Date of CIT(A) order against 154 appeal                         | 27.06.2018     |
| Date of filing appeal before ITAT against CIT(A) order          | 27.08.2018     |
| Date of ITAT hearing  | 08.01.2019     |
| Date of withdrawal of appeal before ITAT                        | 08.01.2019     |
| Date of filing appeal before CIT(A) against intimation u/s 200A | 04.03.2019     |
| Date of CIT(A) order against 200A appeal                        | 20.05.2019     |
| No. of days delay in filing appeal against 200A intimation      | 1192           |

3. Briefly stated facts are that the assessee is a charitable trust and has filed appeal before CIT(A) against the intimation u/s. 200A of the Income Tax Act, 1961 (hereinafter 'the Act') passed by DCIT, Central Processing Cell (TDS), Chennai. The assessee contended that these appeals should have been filed within 30 days from the service of intimation u/s. 200A of the Act before CIT(A), the details of each appeal is reproduced above. These appeals were however filed admittedly with the delay beyond the time allowed for filing of these appeals, delay ranging from 876 to 1192 days. The Ld. Counsel for the assessee stated assessee was pursuing alternative remedy before the AO and consequent appellate proceedings against the orders passed u/s. 154 of the Act. The Ld. Counsel for the assessee before us stated that the assessee received order passed u/s. 154 of the Act i.e. rectification order on the instance of the assessee against the intimation u/s. 200A of the Act (Q.II) for the assessment year 2013-14. It was contended that the assessee aggrieved by the order of late fee u/s. 234E of the Act but not inadvertently filed appeal before the CIT(A) against the orders passed on the intimation passed u/s. 200A of the Act but filed appeals against the orders passed u/s. 154 of the Act. The CIT(A) vide order dated 27.06.2018 dismissed the appeals of the assessee and upheld the late fee levied by the Assessing Officer u/s. 234E of the Act. The fact narrated in the above chart are

that the date of receipt of intimation u/s. 200A of the Act was 11.12.2013 and date of order passed by Assessing Officer u/s. 154 of the Act is on 09.06.2018. The assessee challenged this rectification order passed by Assessing Officer u/s. 154 of the Act by filing appeal before CIT(A) on 27.08.2018. The CIT(A)'s order against Section 154 of the Act was challenged before ITAT on 27.08.2018. The date of hearing fixed before ITAT was 08.01.2019, wherein the assessee realized that this alternative remedy of challenging rectification order u/s.154 of the Act is not maintainable and hence, this appeal was withdrawn by the assessee and consequently, the assessee filed appeal before the CIT(A) against intimation u/s. 200A of the Act. Thereby, the delay in filing appeal against Section 200A of the Act is 1876 days in this appeal which is maximum out of these appeals. Before us now the assessee counsel stated that it was only at the time of hearing before the Tribunal that the assessee became aware that the appeals which were filed against the intimation passed u/s. 154 of the Act were not maintainable in terms of s. 246A r/w s. 253 of the Act and that the appeals should have been filed against the original intimation issued by Assessing Officer u/s. 200A of the Act.

4. In view of the above facts, the Ld. Counsel further stated that in the meantime the management got engaged with the preparation for

its managing trustee's daughter's marriage and hence, the appeals were further delayed and it was only after the marriage of the managing trustee's daughter appeals were filed against the intimation passed by Assessing Officer u/s. 200A of the Act. These appeals were then drafted by concerned Chartered Accountant and the assessee signed these appeals on 26.02.2019 and these were filed finally online on 28.02.2019 for various quarters indicating the total delay as mentioned in the above table.

5. In view of the above reasons, the Ld. Counsel prayed that the delay was due to the fact that the alternative remedy being pursued by the assessee and due to this reason the assessee could not file appeals against intimation u/s. 200A of the Act and thereby the reasons were beyond the control of the assessee and this being reasonable and sufficient cause for not filing of the appeals on time, the delay should have condoned. In this connection, the Ld. Counsel also relied on the decision of Hon'ble Madras high Court in the case of CIT vs. KSP Shanmugavel Nadar [1985] 153 ITR 596 (Mad), wherein it is held by the Hon'ble High Court that the assessee pursuing the alternative remedies, the time taken in this proceedings should be taken into account while determining whether the assessee has sufficient cause for not presenting the appeals in time or not?

6. On the other hand, the Ld. Sr. DR could not controvert the above stated facts and reasons for the delay. She could not attribute any malafide for delay in filing of these appeals.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has taken steps to file all these appeals with the relevant appellate authority but was pursuing only alternative remedy by filing application u/s. 154 of the Act i.e., rectification proceedings were taken up to the Tribunal and consequently, the assessee was made aware by their Chartered Accountant about the consequences of these rectification proceedings, the assessee immediately prepared the appeals and filed with the CIT(A) against intimation u/s. 200A of the Act. Admitted facts are that the assessee was pursuing alternative remedy, even though the delay is very long, we feel that the assessee has reasonable and sufficient cause for not filing these appeals against intimation u/s. 200A of the Act passed by Assessing Officer u/s. 200A of the Act before CIT(A). Since, we noticed reasonable and sufficient cause in not filing these appeals before CIT(A), we reverse the orders of CIT(A) and condone the delay. We, set aside all these appeals to the file of CIT(A).

8. Since, we are condoned the delay and the CIT(A) has not adjudicated on merits, we have set aside order of CIT(A), we are not going into the merits and directing the CIT(A) to adjudicate the issue on merits after providing reasonable opportunity being heard to the assessee.

9. In the result, all the appeals of the assessee are allowed for statistical purpose.

*Order pronounced on 26<sup>th</sup> day of February, 2020 in Chennai.*

Sd/-

एम बाला गणेश)

**(M. BALAGANESH)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 26<sup>th</sup> February, 2020.

*EDN, Sr. P.S*

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

**उपाध्यक्ष /VICE PRESIDENT**

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