

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

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1432 to 1434/Bang/2019
(Assessment Years : 2013-14 to 2015-16)

Shri Kasturi Prabodh Pai,
6-4-93, Ananth, 6thCross Gandhi Nagar,
Mangalore-560
PAN AIZPP0563C

....Appellant

Vs.

Asst. Commissioner of Income Tax,
CPC, TDS, Ghaziabad.

.....Respondent.

Assessee By:	None.
Revenue By:	Shri A. Ramesh Kumar, JCIT (D.R)

Date of Hearing :	03.03.2020
Date of Pronouncement :	06.03.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

These are the appeals filed by the assessee against the different orders of Commissioner of Income Tax (Appeals)-10, Bangalore. Since the issues are common and identical in all these appeals, they are clubbed and heard together and consolidated order is passed. For the sake of convenience, we shall take up the ITA

No.1432/Bang/2019 for the Assessment Year 2013-14 and the facts narrated therein.

2. None appeared on behalf of the assessee in spite of issue of Notice. The RPAD acknowledging the receipt of notice was placed in the file. On perusal of details, we find there is a delay of 291 days in filing the appeal before the Tribunal and the assessee has filed petition explaining the delay. On examination of the facts and explanations of the assessee, we found that there is a reasonable cause for delay in filling, for which the learned Departmental Representative has no serious objection. Accordingly, we condone the delay and admit the appeal and heard.

3. The assessee has raised the following grounds of appeal :

1. **Erroneous Intimation:** The intimation issued by the learned Assessing officer (AO) Assistant Commissioner of Income Tax CPC-TDS Ghaziabad U/s 200A of the Income Tax Act,1961 is erroneous arbitrary and opposed to the facts of the case and the law and is liable to be negated.
2. **Late fees to be paid at the time of furnishing statements and not later on:** The subsection 3 of the section 234E of the acts states that it shall be paid before delivering or causing to be delivered a statement in accordance with subsection (3) of section 200 or the proviso to sub section (3) of section 206C. Therefore, any late fee should have been deposited just at the time of delivering TDS statement and not later than this.
3. **Late Fee not recoverable where statements are accepted without late fees:** That once the TDS statement has been accepted without late fee, then such late fee cannot be recovered later on. In the view of the above late fee cannot be recovered later on by way of any notice, no notice of demand U/s 156 can be issued for this.

4. Prior to 1st June 2005, Section 200A was not permitted to process Late Filing Fees:

The section 200A of the Act does not permit processing of statement of TDS statement for default in payment of late fee except any arithmetical error, incorrect claim, or default in payment of interest and TDS payable and refundable etc. Hence late fee for TDS quarterly return cannot be recovered by way of processing under this section, but if issued then it is illegal. Hence it is liable to be cancelled.

5. Recovery possible ONLY in case of legally recoverable amount: Recovery of amount can be made only when it is legally recoverable Hence the recovery of late fee is illegal has to be cancelled and quashed.

6. The appellant craves leave to add, alter or withdraw any of the grounds of appeal.

4. The brief facts of the case are that the assessee has filed Quarterly TDS Return for the Quarter4 of the financial year2012-13on24.09.2013. Subsequently, the Return was processed and order under Section 200A of the Act was issued with late fees under Section 234E of the Act for delay in filing the Quarterly TDS statement of Rs.20, 400. Against the order under Section 200A of the Act, the assessee has filed an appeal with the CIT(Appeals). whereas the CIT (Appeals), considering the grounds of appeal observed that there is a delay in filing the appeal, as the order u/sec 200A of the Act levying late fees under Section 234E of the Act was passed on 26.10.2013.But the assessee has filed an appeal on 16.08.2016.Hence, there is a delay of more than two and half years. The assessee has filed explanations on delay referred at Para 4.1 of order, but the CIT (Appeals) has considered the facts of delay, and overlooked the sufficient cause and dismissed the appeal of the assessee without condoning the delay. Aggrieved by

the order of Cit(A),the assessee has filed an appeal with the tribunal. Since none appeared on behalf of the assessee, the LdDr made submissions and supported the orders of CIT (Appeals).

5. We heard the learned Departmental Representative and perused the material on record. We found that the CIT (Appeals) has dismissed the appeal without condoning the delay as no sufficient cause was explained. The assessee has filed the appeal against the order u/sec200A of the Act for the Assessment Year 2013-14 on 16.08.2016.But The CIT (Appeals) observed that there is a delay of 994 days in filling the appeal, though the assessee explained the reasons for delay,the appellate authority was not satisfied with the explanations on the sufficient cause. We found the assessee has co-operated in appellate proceedings and filed the explanations referred at Para4.1 of the CIT(Appeals) order. We considering the facts and circumstances of the case are of the opinion that the assessee shall not gain any benefit in delaying the process of filling the appeal, further on perusal of the explanations submitted by the assessee in the appellate proceedings, we noticed existence of reasonable cause which cannot be overlooked. Hence, We considering the principles of natural justice, support our view relying on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. M.S. Katiji & others (167 ITR 471) (SC)and the observations are read as under :

" The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

Accordingly, we follow the ratio of the decision, facts and circumstances and in the interest of substantial justice, condone the delay and set aside the order of CIT(Appeals) and restore the entire disputed issues to the file of CIT(Appeals) to admit and adjudicate on merits afresh. Further provide adequate opportunity of hearing to the assessee and the assessee shall co-operate in submitting the information for early disposal of the appeal and allow the grounds of appeal of assessee for statistical purposes.

6. Similarly, in ITA Nos.1433 & 1434/Bang/2019 for the Assessment Year 2014-15 and 2015-16, the issues are similar and identical and also there is a delay in filing the appeal before the Tribunal, we have taken a decision in the assessee appeal in ITA No.1432/Bang/2019 condoning the delay and admitting the appeal. Further relying on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. M S T Katiji & Others (supra), the delay in filling the appeal before Cit(A) is condoned and appeal is restore to the file of CIT(A) for fresh adjudication on merits and the same decision shall equally apply to these appeals. Accordingly, we condone the delay and set aside the orders of CIT(Appeals) and restore the disputed issues to the file of CIT(Appeals) to admit and adjudicate afresh on merits and allow the grounds of appeal of assessee for statistical purposes.

7. In the result, the assessee's appeals for the A.Ys 2013-14, 2014-15 and 2015-16 are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 06.03.2020.

*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