

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
' D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
एवं एस जयरामन, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER &
SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

**I.T.A.Nos.2935 to 2941,2942 to 2953 & 2954 to 2956 /Chny/2019
and**

Assessment years	2014-15(24Q-Q3),	2014-15(24Q-Q4),
2014-15(26Q-Q2),	2014-15(26Q-Q3),	2014-15(26Q-Q4),
2014-15(27Q-Q4),	2014-15(27EQ-Q4),	2015-16(24Q-Q1),
2015-16(24Q-Q2),	2015-16(24Q-Q3),	2015-16(24Q-Q4),
2015-16(26Q-Q1),	2015-16(26Q-Q2),	2015-16(26Q-Q3),
2015-16(26Q-Q4),	2015-16(27EQ-Q1),	2015-16(27EQ-Q2),
2015-16(27EQ-Q3),	2015-16(27EQ-Q4),	2016-17(24Q-Q1),
2016-17(26Q-Q1),	2016-17(27EQ-Q1).	

**M/s.W.S.Industries India
Ltd.,**
108,Mount Poonamallee Road,
Chennai 600 116.

Vs. Assistant Commissioner of
Income Tax,
CPC,TDS,Ghaziabad. 201 010.
Uttar Pradesh

[PAN AAACW 0572 E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Mr.B.Ramakrishnan,C.A
: Mr.Sunderarajan,Addl. C.I.T D.R

सुनवाई की तारीख/Date of Hearing

: 13-05-2020

घोषणा की तारीख /Date of Pronouncement

: 13-05-2020

आदेश / ORDER

PER BENCH

These 22 appeals are filed by the Assessee against the consolidated order of the Commissioner of Income Tax (Appeals)-17, Chennai in appeal Nos.441 to 452(A), 461 to 466, 469,470,472/18-19, dated 09.09.2019, for the assessment years 2014-15(24Q-Q3), 2014-15(24Q-Q4), 2014-15(26Q-Q2), 2014-15(26Q-Q3), 2014-15(26Q-Q4), 2014-15(27Q-Q4), 2014-15(27EQ-Q4), 2015-16(24Q-Q1), 2015-16(24Q-Q2), 2015-16(24Q-Q3), 2015-16(24Q-Q4), 2015-16(26Q-Q1), 2015-16(26Q-Q2), 2015-16(26Q-Q3), 2015-16(26Q-Q4), 2015-16(27EQ-Q1), 2015-16(27EQ-Q2), 2015-16(27EQ-Q3), 2015-16(27EQ-Q4),2016-17(24Q-Q1), 2016-17(26Q-Q1), 2016-17(27EQ-Q1).

2. Mr.B.Ramakrishnan, represented on behalf of the assessee and Mr.Sunderarajan represented on behalf of the Revenue.

3. As the facts are identical in all these 22 appeals of assessee, they are heard together and are disposed off by this common order.

4. It was submitted by the learned A.R. that these appeals related to the levy under Section 234E of the Act. It was a submission that on merits the issue was in favour of the assessee as held in various cases by the Tribunal holding that the levy under Section 234E prior to 01.06.2005 was invalid as there was no enabling provision in Section 200A vis-à-vis Clause (1)(C) of 234E for the levy of such fee while processing the statement of tax deducted at source. The Ld. A.R. relied on the decision of the Co-ordinate Bench of the Chennai Tribunal in the case of M/s.Pelican Realty projects Private Ltd., Vs. DCIT, in I.T.A. Nos.2252 to 2255 /Chny/2019 dated 19.12.2019 for assessment years 2015-16(Q1)(Q2)(Q3) & 2016-17(Q1). It was submitted by the Ld. A.R. that as the appeals filed by the assessee before the learned CIT(A) was delayed, learned CIT(A) has dismissed the assessee's appeals by not condoning the delay. It was further submitted by the Ld. A.R. that the assessee company is undergoing re-structuring and that the factory of the assessee is closed on account of re-structuring. It was submitted that the requisite TDS had been paid within the due date and on account of re-structuring, the Accountant of the assessee

company had on a presumption that all the requisite had been complied with, had not taken any further action. It was a submission that it was only when the CPC informed of the delay, that immediate corrective measures have been taken and further, the Accountant had not intimated the management in respect of the orders received. Immediately when the assessee came to know of the orders, the appeals were filed.. It was submitted by the Ld. A.R that when substantial justice is pitted against technicalities, the Hon'ble Supreme Court has categorically held that technicalities should step back and substantial justice should prevail. The Ld. A.R. placed reliance on the decision of the Hon'ble Supreme Court in the case of Mst.Katiji (1987) 2 SCC 107. It was a prayer that the delay in filing of the appeals before the learned CIT(A) may be condoned and the issues in the appeal restored to the file of the learned CIT(A) for adjudication on merits.

5. In reply, the Ld. D.R. submitted that there is a substantial delay in filing of these appeals varying from 312 days to maximum of 1715 days. The learned Departmental Representative vehemently supported the order of the learned CIT(A).

6. We have heard the rival submissions and perused the material available on record. A perusal of the decision in the case of Mst.Katiji (1987) 2 SCC 107(SC) as declared by the Apex Court shows that Hon'ble Supreme held that:

"Ordinarily a litigant does not stand to benefit by lodging an appeal late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen, is that a cause would be decided on merits after hearing the parties."

Thus, clearly the Hon'ble Supreme Court has accepted the proposition that when substantial justice is pitted against technicalities, substantial justice must prevail. Keeping this principle in mind, if the cause of the delay in filing of these appeals before the learned CIT(A) is viewed, it becomes clear that the assessee has substantially reasonable cause in respect of the delay in filing of these appeals. Consequently, we are of the view that the delay in filing of the appeals by the assessee before the learned CIT(A) requires to be condoned and we do so. As it is noticed that the learned CIT(A) has not given his findings on merits, the issues in

these appeals on merits are restored to the file of the learned CIT(A) for adjudication.

7. In the result, all these 22 appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced in the open court after conclusion of hearing on 13th May, 2020, at Chennai.

Sd/-
(एस जयरामन)
(S. JAYARAMAN)
लेखा सदस्य/Accountant Member

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 13th May, 2020.

K S Sundaram

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