



M/s Sparsh Designs Private Limited  
ITA Nos.1361 to 1364/Mum/2020  
Assessment Years: 2013-14 to 2016-17

**आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**माननीय श्री छल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI C.N. PRASAD, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.1361 to 1364/Mum/2020  
(निर्धारण वर्ष / Assessment Years: 2013-14 to 2016-17)

M/s. Sparsh Designs Private Limited B-1306, Oberoi Splendor JVLR, Jogeshwari (East) Mumbai 400 060	बनाम/ Vs.	ITO-TDS Ward 2(2)(4) Ayurvedic Hospital Building Charni Road Mumbai 400 004.
<b>PAN / TAN: AAOCS-6795-B / MUMS67917D</b>		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

<b>Assessee by</b>	:	Shri Prakash Junjhunwala – Ld. AR
<b>Revenue by</b>	:	Shri V. Vinod Kumar-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	18/08/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21/08/2020

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. The assessee has common grievance in all the 4 captioned appeals for Assessment Years (AY) 2013-14 to 2016-17. The facts are pari-materia the same in all the appeals and therefore, the appeals were heard together and are now being disposed-off by way of this consolidated order for the sake of convenience and brevity.



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**ITA No.1364/Mum/2020, AY 2013-14**

2. This appeal assails the order of Ld. Commissioner of Income Tax (Appeals)-60, Mumbai [CIT(A)], Appeal No. CIT(A)-60/IT-10052/ACIT(CPC)(TDS)/2015-16 dated 13/08/2019 on following grounds: -

- 1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in not condoning the delay in filing of the 1<sup>st</sup> appeal on ignoring the bonafide reasons and compelling circumstances beyond control of the appellant and a prayer is made to condone the delay in filing of the 1<sup>st</sup> appeal;
- 2.0 The Ld. CIT(A) erred seriously in rejecting the appellant's application for condonation of delay without considering the written submission, supporting documents and Judicial decisions filed before 1<sup>st</sup> appellate authority;
- 3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in not deleting the fees charged u/s. 234E of Rs.251,073/- for delay in furnishing the TDS returns, without considering the fact that the powers to process the statement u/s. 200A(1)(c) to recover the fee u/s. 234E is made effective from 01/06/2015 and would not apply retrospectively;
- 4.0 On facts and circumstances of the case and in law, Ld. CIT(A) ought to have deleted the late fee charged u/s. 234E since an opportunity of being heard has not been allowed by Ld. TDS Officer to the appellant."

As evident the assessee is aggrieved by levy of late fees u/s 234E and also by the fact that learned first appellate authority refused to condone the delay in assessee's appeal.

3. We have carefully heard the rival submissions. The Ld. AR pleaded for condonation of delay and restoration of appeal to the learned first appellate authority for disposal on merits. The Ld. DR opposed the same. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4.1 Facts on record would reveal that the assessee has been saddled with late fees u/s 234E for Rs.2,51,073/- while processing TDS returns of various quarters in Form Nos. 24Q and 26Q. The quarter-wise details



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have already been tabulated on page-2 of the impugned order. The said fees have been charged in various orders dated 11/11/2016 passed by TDS-CPC u/s 200A of the Income Tax Act, 1961 in respect of e-tds statements filed by the assessee. The appeal was instituted by the assessee on 27/07/2018 and accordingly, it was viewed that the appeal was filed belatedly.

4.2 The assessee, *inter-alia*, submitted that the aforesaid statements (default summary) u/s 200A were served to the assessee only on 27/06/2018 and accordingly, the appeal was filed within stipulated period of 30 days as prescribed u/s 249(2). Alternatively, the assessee pleaded for condonation of delay on account of adverse medical as well financial conditions being faced by the director of the assessee entity. It was submitted that there was no negligence or deliberate attempt to delay the filing of the appeal. The assessee also assailed the levy of fees on merits.

4.3 However, Ld. CIT(A) rejecting the stand of assessee, noted that the regular statement was processed on 28/12/2013 and there was considerable delay in filing of the appeal. The assessee could not establish sufficient cause of late filing of appeal in terms of Section 249(3) of the Act and therefore the delay was not to be condoned. Finally the appeal was dismissed on technical ground of delay. Aggrieved as aforesaid, the assessee is under further appeal before us.

4.4 The Ld. AR reiterated the submissions made by the assessee before Ld. CIT(A) to support the stand of condonation of delay. Our attention has been drawn to the fact that the assessee's business was



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situated in Nepal and the same was closed down in devastating earthquake in Nepal on 25/04/2015. The situation caused financial trouble to the directors of the assessee who were forced to sell their residential house and had to shift to rented accommodation. Due to shifting of premises, the statements remained unserved. It was also submitted that the copies of TDS statements u/s 200A were provided to the assessee only on 27/06/2018 and therefore, the limitation period was to be counted from the date of effective knowledge. An affidavit of assessee's director, Shri Prateek Jain, affirming the said facts has been placed on record. A copy of email dated 27/06/2018 from ITO-TDS has been placed on record to support the submissions that screen prints of intimation delivery were forwarded to the assessee only on that date.

5. We have carefully considered the rival arguments as well as material placed before. Keeping in view the adverse business / financial as well as medical conditions being faced by the director of the assessee entity, we are of the considered opinion that the delay was to be condoned. The factual matrix placed before us could explain the non-receipt of statements u/s 200A by the assessee. While doing so, we are guided by the following principles laid down by Hon'ble Supreme Court regarding condonation of delay in the case of ***Collector, Land Acquisition Vs. Katiji [167 ITR 471 (SC)]*** : -

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. 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.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common-sense pragmatic manner.



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4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

We are unable to find any deliberate negligence or malicious intent on the part of the assessee in filing of the appeal. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. Keeping in mind the aforesaid principles, the bench formed an opinion that the delay was to be condoned and the appeal was to be restored back to the file of learned CIT(A) for disposal on merits. We order so. Resultantly, the appeal stands partly allowed to that extent.

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6. Facts are pari-materia the same in all these 3 years. The assessee has been saddled with late filing fees u/s 234E which was assailed before learned first appellate authority. The Ld. CIT(A), on similar logic as well as reasoning, dismissed all the appeals primarily on technical ground of limitation. Aggrieved the assessee is in further appeal before us with similar grounds.

7. Facts in all the 3 appeals being pari-materia the same as in AY 2013-14, our adjudication as well as directions given therein shall



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*mutatis-mutandis*, apply to all these 3 appeals also. Resultantly, all the appeal stands partly allowed to that extent.

### **Conclusion**

8. All the appeals stand partly allowed in terms of our above order.

*Order pronounced on 21<sup>st</sup> August,2020.*

**Sd/-**  
**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/08/2020

*Sr.PS, Jaisy Varghese*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.