

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C', NEW DELHI  
(Through Video Conferencing)**

**BEFORE,  
SHRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.5675/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(24Q) (Qtr-2)

ITA No.5676/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(24Q) (Qtr-3)

ITA No.5677/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(24Q) (Qtr-4)

ITA No.5678/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(26Q) (Qtr-2)

ITA No.5679/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(26Q) (Qtr-3)

ITA No.5680/Del/2019  
(ASSESSMENT YEAR-2013-14)  
(26Q) (Qtr-4)

M/s Pythhos Technology Pvt. Ltd. E-4/3, Vasant Vihar, New Delhi-110057 PAN:AAFCP 5783P	Vs.	Asst.CIT, CPC, Ghaziabad
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Amit Sharma, Adv.</b>
Respondent by	<b>Sh. Rakhi Vimal, Sr-DR</b>
Date of Hearing	<b>28.08.2020</b>
Date of Pronouncement	<b>31.08.2020</b>

### **ORDER**

#### **PER BENCH:**

These are a bunch of six appeals wherein the sole issue under challenge is levy of fee u/s 234E of the Income Tax Act, 1961 (hereinafter called as the 'Act') in respect of delay in filing the quarterly TDS statements for the captioned assessment years. All these appeals were taken up together for hearing and are being disposed of through this common order for the sake of convenience.

2.0 At the outset, the Ld. Authorized Representative (AR) appearing on behalf of the assessee submitted that all these six appeals have been dismissed by the Ld. Commissioner of Income Tax (Appeals) {CIT(A)} by refusing to condone the delay in filing the appeals ranging from 430 days to 1540 days before him.

3.0 It was submitted that there was a delay ranging from 430 to 1540 days in the filling of the appeals before the Ld. CIT(A) due to

the reason that there was a change in the advocate engaged by the assessee company who did not complete the work in time. It was submitted that the reason for delay in filing of the appeals before the Ld. CIT(A) was entirely out of control of the assessee company. The Ld. Authorized Representative (AR) submitted that this explanation was given to the Ld. CIT(A) but he did not accept the same. The Ld. Authorized Representative (AR) also submitted that similar delay had occurred in Asst. Years: 2014-15 & 2015-16 where the Ld. CIT(A) had condoned the delay but on identical facts, the delay was not condoned in respect of all these captioned appeals.

4.0 The Ld. AR, on a query from the Bench, agreed to re-appear before the Ld. First Appellate Authority to represent its case on merits, if given an opportunity.

5.0 The Ld. Sr. Departmental Representative (DR), per contra, reiterated the findings of the Ld. CIT(A) and vehemently argued that there was substantial delay in filing of the appeals by the assessee which should not be condoned.

6.0 Having heard both the parties and after having gone through the impugned appellate orders, we agree with the contention of the Ld. AR that the Ld. CIT(A) has dismissed the assessee's appeals without adjudicating on the merits of the issue by simply refusing to condone the delay which had occurred in filing of the appeals before the Ld. CIT(A). The Ld. CIT(A) has refused the assessee's explanation regarding the delay and has refused to condone the delay by observing that the explanation was not satisfactory. We are of the considered opinion that the assessee had nothing to gain by delaying the filing of the appeals and its bonafide in explaining the delay cannot be ignored. The Hon'ble Apex Court in the case of *Collector Land Acquisition, Anantnag & Anr. reported in 1987 SCR (2) 387* has held that liberal approach is to be adopted while exercising the power to condone delay in order to enable the Court to do substantial justice to parties by disposing of matters on merits. The Hon'ble Apex Court held that:

*"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908. may be admitted after the prescribed period if the appellant or the applicant satisfies*

*the court that he had sufficient cause for not preferring the appeal or making the application within such period."*

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.*

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."*

6.1 Therefore, in view of substantive justice, respectfully following the dicta of the Hon'ble Apex Court as above, we restore all the captioned appeals to the file of Ld. CIT(A) with the direction to condone the delay and adjudicate the appeals on merits in accordance with the law after giving proper opportunity to the assessee to present its case.

7.0 In the final result, all the captioned appeals stand allowed for statistical purposes.

Order pronounced on 31/08/2020

Sd/-

**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**

Dated: 31/08/2020

*PK/PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI