

**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.5681/Del/2019  
(ASSESSMENT YEAR-2013-14)  
24Q (Q-2)

ITA No.5682/Del/2019  
(ASSESSMENT YEAR-2013-14)  
24Q (Q-3)

ITA No.5683/Del/2019  
(ASSESSMENT YEAR-2013-14)  
24Q (Q-4)

ITA No.5684/Del/2019  
(ASSESSMENT YEAR-2013-14)  
26Q (Q-2)

ITA No.5685/Del/2019  
(ASSESSMENT YEAR-2013-14)  
26Q (Q-3)

ITA No.5686/Del/2019  
(ASSESSMENT YEAR-2013-14)  
26Q (Q-4)

ITA No.5687/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-24) (Q-1)

ITA No.5688/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-24) (Q-2)

ITA No.5689/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-24) (Q-3)

ITA No.5690/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-24) (Q-4)

ITA No.5691/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-26) (Q-1)

ITA No.5692/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-26) (Q-2)

ITA No.5693/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(Q-26) (Q-3)

ITA No.5694/Del/2019  
(ASSESSMENT YEAR-2014-15)  
(26-Q) (Q-4)

ITA No.5695/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(24-Q) (Q-1)

ITA No.5696/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(24Q) (Q-2)

ITA No.5697/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(24Q) (Q-3)

ITA No.5698/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(24Q) (Q-4)

ITA No.5699/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(26Q) (Q-1)

ITA No.5700/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(26Q) (Q-2)

ITA No.5701/Del/2019  
(ASSESSMENT YEAR-2015-16)  
(26Q) (Q-3)

D.S. Hotels & Inns Pvt. Ltd. A-10, Chitranjan Park, New Delhi-110019 PAN:AABCD 6193M	Vs.	Asst. CIT-CPC, Ghaziabad.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Shalabh Jasoria, CA</b>
Respondent by	<b>Sh. Rakhi Vimal, Sr-DR</b>
Date of Hearing	<b>27.08.2020</b>
Date of Pronouncement	<b>31.08.2020</b>

### ORDER

#### PER BENCH:

These are a bunch of 21 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 21 appeals have been dismissed by the Ld. Commissioner of Income Tax (Appeals) {CIT(A)} by refusing to condone the delay in filing of the appeals before him. He submitted the following chart which depicts the delay in filing in respect of each appeal:-

S. No.	Appeal No	Date of Filing of Appeal	Assessment year/ Financial year	Income-tax Authority passing the order appealed against	Date of such Order	Delay in filing Appeal
1	388332301131218	13/12/2018	2013-14	ACIT- CPCTDS	09/11/2016	771
2	388363961131218	13/12/2018	2013-14	ACIT- CPCTDS	09/11/2016	762
3	388383051131218	13/12/2018	2013-14	ACIT - CPCTDS	09/11/2016	761
4	388411561131218	13/12/2018	2013-14	ACIT-CPC TDS	09/11/2016	761
5	388420471131218	13/12/2018	2013-14	ACIT-CPCTDS	09/11/2016	761
6	388427411131218	13/12/2018	2013-14	ACIT-CPC TDS	09/11/2016	761
7	388634591141218	13/12/2018	2014-15	ACIT-CPCTDS	01/01/2017	709
8	388652511141218	13/12/2018	2014-15	ACIT- CPC TDS	01/01/2017	709
9	388679541141218	13/12/2018	2014-15	ACIT - CPC TDS	01/01/2017	709
10	388716621141218	13/12/2018	2014-15	ACIT - CPC TDS	01/01/2017	709
11	388844801141218	13/12/2018	2014-15	ACIT-CPCTDS	01/01/2017	709
12	388852641141218	13/12/2018	2014-15	ACIT-CPC TDS	01/01/2017	709
13	388868521141218	13/12/2018	2014-15	ACIT-CPCTDS	01/01/2017	709
14	388890791141218	13/12/2018	2014-15	ACIT-CPCTDS	01/01/2017	709
15	388911421141218	13/12/2018	2015-16	ACIT- CPC TDS	10/11/2015	1126
16	389106581151218	13/12/2018	2015-16	ACIT- CPC TDS	06/11/2016	765
17	389113981151218	13/12/2018	2015-16	ACIT - CPC TDS	10/11/2015	1127
18	389070661151218	13/12/2018	2015-16	ACIT-CPC TDS	06/11/2016	765
19	389138401151218	13/12/2018	2015-16	ACIT - CPC TDS	10/11/2015	1128
20	389212141151218	13/12/2018	2015-16	ACIT-CPC TDS	06/11/2016	765
21	389255051151218	13/12/2018	2015-16	ACIT-CPC TDS	10/11/2015	1127

3.0 Referring to the above chart, the Ld. Authorized Representative (AR) submitted that, thus, there is a delay ranging

from 709 days to 1128 days in the filing of the appeals before the Ld. CIT(A). The Ld. AR submitted that the delay in filing these appeals was due to the reason that there was a change in counsel for the assessee company and the outgoing counsel had not returned the relevant documents to the assessee company in time. It was submitted that, thus, the reason for filing the above captioned appeals after the due date was entirely out of control of the assessee company. It was submitted that this explanation was given to the Ld. CIT(A) also but he did not accept the explanation and refused to condone the delay and dismissed the assessee's appeals without examining the merits of the case.

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