

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.1110 to 1113/JP/2019
निर्धारण वर्ष/Assessment Year : 2016-17 (24 Q. 1)

AEN (O &M) AVVL, Kanwat, Sikar.	बनाम Vs.	The DCIT, CPC(TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 8562 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 1116 to 1118 &1126/JP/2019
निर्धारण वर्ष/Assessment Year : 2013-14 (24 Q. 2, Q.4)

AEN (O &M) AVVL, Danta Ramgarh, Sikar.	बनाम Vs.	The DCIT, CPC(TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 8562 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 1119 to 1121/JP/2019
निर्धारण वर्ष/Assessment Year : 2013-14 (24 Q. 2, Q.3, Q.4)

AEN (O &M) AVVL, Neem Ka Thana, Sikar.	बनाम Vs.	The DCIT, CPC(TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 8562 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 1122/JP/2019
निर्धारण वर्ष/Assessment Year : 2013-14 (24 Q. 3)

AEN (O &M) AVVL, Khatushyamji, Sikar.	बनाम Vs.	The DCIT, CPC(TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 8562 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Ankur Aalgia (C.A.)
राजस्व की ओर से / Revenue by : Miss Chanchal Meena (ACIT)

सुनवाई की तारीख / Date of Hearing : 24/08/2020
उदघोषणा की तारीख / Date of Pronouncement: 25/08/2020

आदेश / ORDER

PER BENCH:

These are 3 set of 4 appeals total 12 by the assessee-Ajmer Vidhyut Vitran Nigam Ltd. directed against the respective orders of the Id. CIT(A), Jaipur all dated 21.06.2019 arising from adjustment made by the AO on account of levy of late fees U/s 234E of the IT Act while processing quarterly TDS statement filed by the assessee for the financial year 2012-13 and 2015-16 respectively U/s 200A(1) of the IT Act. Due to prevailing COVID-19 pandemic condition the hearing of the appeals are concluded through video conference.

2. There is delay of 14, 17, & 20 days respectively in filing these three set of fours appeals. The assessee has filed applications for condonation of delay and has explained the cause of delay of 14 to 20 days.

3. We have heard the Id. AR as well as Id. DR on condonation of delay in filing these appeals before the Tribunal. The assessee has explained the delay that the offices of the assessee are situated in the rural areas whereas the tax consultant and head office is in Ajmer and therefore, in taking the advice from tax consultant and approval from the head office took some times which has resulted the delay of 14 to 20 days in filing these appeals by the respective field offices of the assessee. The Id. AR of the assessee has also relied upon the various decisions on condonation of delay and submitted that a liberal approach be adopted when such delay can result in a meritorious matter being thrown out and defeat the cause of justice.

4. On the other hand, Id. DR has objected to the condonation of delay and submitted that the appeals of the assessee were dismissed by the Id. CIT(A) due to delay in filing the appeals. Therefore, the assessee has again repeated the same conduct of filing the appeals belatedly.

5. Having considered the rival submissions and carefully perused of the application for condonation of delay we find that the assessee has explained the cause of delay of 14, 17 & 20 days in filing the appeals as respective offices of the assessee are situated in rural areas far from the head office at Ajmer as well as the tax consultant of the assessee

also available in Ajmer. Thus, the assessee has explained that while taking the advice of the tax consultant as well as approval of the headquarter it took some times which has resulted the delay in filing these appeals. We further note that so far as the appeals pertaining to the financial year 2012-13 the assessee has a prima facie good case due to the reason that those cases pertains to pre-amendment of Section 200A(1) of the Act w.e.f. 01.06.2015 whereby the AO is given the power to make the adjustment on accounts of late fee levy U/s 234E of the Act. Hence, in the facts and circumstances of the case and in the interest of justice we condone the delay of 14, 17 & 20 days in filing these appeals by the assessee.

6. The assessee has raised the following common grounds in these appeals:-

"In the facts & circumstances of the case the Ld. CIT Appeals, Ajmer has erred in not admitting the appeal for LATE FEES imposed u/s 234E Under clause © of subsection 1 of 200A.

1. The assessee has Filed an appeal with Ld CIT(appeals) JAIPUR which was technically delayed . The delay in filing the appeal was due to the fact that applicant has not receive the notice by post as well as by email. and also incumbent incharge was transferred and file not found.. After ITO demand notice the applicant checked income tax site and then filed the appeal. hence the filing of the appeal was delayed. also appeal to file online necessary approvals to be taken, hence the filing appeal was delayed.

2. The Ld CIT(appeals) has erred in dismissing Appeal as not admitted the appeal on self interpretation He has not rely on our written submission ,circular and Also NSDL made Mandatory in TDS return email

3. The Ld CIT(appeals) has erred in dismissing Appeal as not admitted without considering the case on merits. Refusing to condone delay has result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

4. The Tax was deducted & Deposited in time, the only default is delay in filing of the return ,the alleged delay in filing the TDS statement has not resulted in any loss of revenue to the department and, therefore, the default, if any, was purely venial breach . The assessee was being GOVT. COMPANY working in public interest and there was no mala fide intention of not filing the TDS return at source within time.

5. As per provision of Sec. 234 E late fee cannot be recovered for TDS statements which were due for F.Y 2012-13 as well on TDS statements late fee cannot be recovered for F.Y 12-13 if not collected at the time of delivering TDS statements to the deptt. provision of Section 234E has been made applicant with effect from 1st July 2012. It states that "Amount of late fee shall be paid before delivering a TDS statement". It means that any late fee should have fee deposited just at the time of delivering TDS statements & not later than this . The authorized TIN-NSDL centre which accepted the TDS statements also accepted there without late fee, as well as the software utility of the TDS deptt. It self accepted these without late fee.

6. The learned CIT APPEALS erred in not following the provision of Section 200A in sub section (1) as clause `c to e' substituted from 01/06/2015 so in the light of amendment "

The adjustment in respect of levy of fees under section 234E was indeed beyond scope of permissible adjustments contemplated under Section 200A" ,hence hence the same should be deleted. As no Opportunity given to explain the cause of delay.

7. The learned CIT APPEALS erred in not agreeing that concealment penalty should not be imposed where an assessee acts honestly without having any mala fide intention to evade tax or where issue is controversial.

8. The learned CIT APPEALS erred in not accepting provision of section 204 of the act The law has not made any person responsible, to deposit late fee, in case of default in case of default in depositing late fee along with TDS statement.

9. In the facts & circumstances of the case the learned .CIT APPEALS erred in not allowing appeal as the delay was due to reasonable cause beyond the control of the control of assessee , hence late fee not leviable and hence the same should be deleted.

10. In the facts & circumstances of the case the learned CIT APPEALS . erred in confirming the order of AO imposing late fee without appreciating the facts & circumstances of the case and hence the same should be deleted."

7. The main grievance of the assessee in all these appeals is that the Id. CIT(A) dismissed the appeals of the assessee in limine without considering the issue on merits. The Id. AR of the assessee has submitted that the assessee filed these appeals only when it came to know that the Assessing Officer has made adjustment on account of late fee levy U/s 234E of the Act while processing the quarterly TDS

statement U/s 200A of the Act. Since the assessee did not receive any notice from the AO regarding the cases were taken up for processing or for demand of the levy. Only when the assessee came to know about such processing and levy of late fee from the income tax site (TRACCESS) the assessee filed the appeals before the Id. CIT(A) belatedly with application for condonation of delay. The Id. AR has submitted that when the assessee has explained the cause of delay and the assessee was having prima facie a good case on merits then the Id. CIT(A) ought to have condoned the delay. Thus, the Id. AR has pleaded that the delay in filing the appeals before of the Id. CIT(A) may be condoned and the matters are directed to be decided on merits.

8. On the other hand, Id. DR has objected to the condonation of delay in filing the appeals before the Id. CIT(A). The Id. DR has further contended that there is inordinate delay in filing all these appeals before the Id. CIT(A) which is raising from 784 days to 1720 days therefore, such an abnormal delay cannot be condoned on an excuse of lack of knowledge of the assessee about the orders passed by the AO. She has relied upon the orders of the Id. CIT(A).

9. We have considered the rival submissions as well as relevant material available on record. Though there were delay of 784 days to

1720 days in filing the appeals before the Id. CIT(A) however, the appeals were filed by the assessee against processing orders U/s 200A(1) of the Act and thereby the AO made adjustment on account of late fee levy U/s 234E of the Act. Thus, it is undisputed fact that the processing done by the AO were not assessment proceedings wherein the assessee was supposed to participate. when the processing was done by the AO and adjustment was made without any prior notices to the assessee then the impugned orders passed by the AO U/s 200A(1) were in the back of the assessee. Further, it appears that the AO has not issued any notice/demand notice to the assessee in physical form but these processing orders were only available on the income site namely TRACES. Further adjustment made by the AO for the financial years 2013-14 and 1st quarter of financial year 2015-16 pertinent to the period prior to the amendment brought in Section 200A(1) by Finance Act 2015 w.e.f. 01.06.2015. Therefore, the assessee has an arguable case for those adjustment made by the AO in respect of the TDS quarterly statement of financial year 2013-14 and first quarter of financial year 2015-16. It is matter of the fact that the adjustment was made by the AO only while processing quarterly TDS statement and it was not order passed by the AO after conducting any proceedings

wherein the assessee ought to have participated. Thus in these proceedings completed by the AO in the back of the assessee and in the absence of any physical notice on the assessee the reasons explained by the assessee for delay in filing the appeals before the Id. CIT(A) are found to be reasonable and bonafide. Once the reasons explained by the assessee are factually correct and reasonable cause then the length of the delay cannot be sole reason to decline the condonation of delay. Accordingly, in the facts and circumstances of the case and in the interest of justice we condone the delay in filing the appeals before the Id. CIT(A). The impugned orders passed by the Id. CIT(A) are set aside and the matters are remitted back to the record of the Id. CIT(A) for deciding the same on merits after giving an appropriate opportunity of hearing to the assessee.

In the result, the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 25/08/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 25/08/2020.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- AEN (O &M) AVVL, Kanwat, Sikar.
AEN (O &M) AVVL, Danta Ramgarh, Sikar.
AEN (O &M) AVVL, Neem Ka Thana, Sikar.
AEN (O&M) AVVL, Khatushyamji, Sikar.
2. प्रत्यर्थी / The Respondent- DCIT, CPC(TDS), Ghaziabad.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1110 to 1113 , 1116 to 1122 and 1126/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar