IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA Nos.1747 & 1748/Bang/2019
Assessment years : 2013-14 & 2014-15

M/s. Kolar District Nirmithi Kendra, Riset Campus, Kolar-Bethamangala Road, Honnenahalli, Tamak Post, Kolar – 563 101. **PAN: AAAAK 4726G**	Vs.	The Assistant Commissioner of Income Tax, CPC (TDS), Ghaziabad.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.S. Prashanth, CA
Respondent by	:	Smt. R. Premi, Addl. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	29.09.2020
Date of Pronouncement	:	30.09.2020

O R D E R

Per N.V. Vasudevan, Vice President

Both these appeals are filed by the assessee and are directed against separate, but identical orders dated 27.06.2019 of the CIT(Appeals)-3, Bengaluru relating to assessment years 2013-14 & 2014-15. As the issues that arise for consideration in both these appeals are common, for the sake of convenience, they were heard together and are disposed of by way of this common order.

2. The assessee made payment for which tax was deducted at source. Return of TDS was filed for Q1 to Q4 of FYs 2012-13 & 2013-14 relevant to AYs 2013-14 & 2014-15.

3. Orders u/s. 200A of the Income-Tax Act, 1961 ["the Act"] were passed by the TDS-Central Processing Cell (CPC) of the Income Tax Department for the impugned assessment years 2013-14 & 2014-15 holding that TDS was short deducted. Accordingly, a demand was raised for short deduction of tax and interest u/s. 234E was also levied thereon.

4. According to the assessee, these orders passed u/s. 200A of the Act by the TDS-CPC were never served on the assessee physically or otherwise and hence the assessee was not aware of the fact that such orders were passed in its case. The assessee received a communication dated 16.10.2018 from ITO, TDS Ward 2(3) demanding late filing fee u/s. 234E of the Act of Rs.6,34,791 of the Act for Q2 to Q4 of AY 2013-14 and Rs.75,625 for Q1 to Q4 of AY 2014-15. According to the assessee, it never received any communication whatsoever even through electronic media on the issue of passing of orders mentioned above. According to the assessee, only when the demands were sought to be collected by the revenue by letter dated 16.10.2018, the assessee came to know of these orders.

5. 5. On coming to know of these demands, the assessee filed appeals before the ld. CIT(Appeals) for both the assessment years. The ld. CIT(A) dismissed these appeals by holding as follows:-

(a) The assessee challenged the orders passed u/s. 200A, but a copy of the same was not uploaded by the assessee along with Form 35;

(b) the assessee has filed appeal against letter dated 16.10.2018 which cannot be equated to an appeal against an order u/s. 200A of the Act.

6. Before us, the ld. counsel for the assessee submitted that no orders u/s. 200A was served on the assessee till date and hence the question of

filing of the appeal with delay and seeking condonation of delay does not arise. It was submitted, on coming to know of such orders which have been uploaded in the portal of Income Tax Department by the TDS-CPC, the assessee had filed the appeals immediately and hence there is no delay. He pleaded that the issue may be sent back to the file of the AO for fresh consideration of the matter on merits, as none of the authorities have given an opportunity to the assessee and looked into the matter on merits.

7. The ld. DR, on the other hand, though not leaving his ground, submitted that the issue may be restored to the file of the ld. CIT(Appeals).

8. After hearing the rival contentions, we are of the considered view that there is no delay in filing of the appeal by the assessee, as no order u/s. 200A of the Act for both years, has been physically served on the assessee till date. These orders have not also been served electronically. Hence the question of delay in filing the appeals does not arise. The appeals, in our view, have been filed within the period of limitation.

9. The ld. CIT(Appeals) could not have dismissed the appeals for the reason that order u/s. 200A was not filed along with Form 35. Defects, if any, could have been rectified by giving notice to the assessee. The assessee is given liberty to download these orders from the portal of the Income Tax Department and file the same before the ld. CIT(A) electronically or otherwise.

10. The ld. CIT(A) nor any authority had considered these issues on merit and disposed of the same in accordance with the law. Only the Computer has processed the orders. Under the circumstances, in our view, it would meet the ends of justice, if the orders of CIT(Appeals) are set aside and matter restored to the file of the CIT(Appeals) to consider the issue on merits afresh. If the CIT(Appeals) feels that separate appeals have to be

filed for each Quarter of the Financial Year for which demands were raised, he should afford opportunity to the assessee to do so. The CIT(Appeals) should consider its objections on the matter and thereafter dispose of the cases on merit in accordance with law. Hence we set aside the impugned orders for both these assessment years and restore the matter to the file of CIT(Appeals) fresh adjudication in accordance with law, after affording opportunity of being heard to the assessee.

11. In the result, both these appeals are allowed for statistical purposes.

Pronounced in the open court on this 30th day of September, 2020.

Sd/-	Sd/-
(B R BASKARAN)	(N V VASUDEVAN)
ACCOUNTANT MEMBER	VICE PRESIDENT

Bangalore,
Dated, the 30th September, 2020.

/*Desai S Murthy /*

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.