

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.2432 to 2442/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2013-14(24Q-Qr2), 2013-14(24Q-Qr3),
2013-14-(24Q-Qr4), 2014-15(24Q-Qr1), 2014-15(24Q-Q2),2014-15(24Q-
Qr3), 2014-15(24Q-Qr4), 2015-16(24Q-Qr1),2015-16(24Q-Qr2),2015-16
(24Q-Qr3) & 2015-16(24Q-Qr4)

Works Manager Govt. Central Automobile Workshop, Chennai , No.1, Velachery Main Road, Velachery, Chennai-600 042.	Vs	Income Tax Officer, TDS Ward 3(3), Chennai.
PAN:AAAGA 1160N		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr.Y.Kaja Navas, Advocate
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. AR.V.Sreenivasan, Addl., CIT

सुनवाई की तारीख/Date of hearing	:	26.10.2020
घोषणा कीतारीख /Date of Pronouncement	:	26.10.2020

आदेश / ORDER

PER BENCH:

The bunch of 11 appeals filed by the assessee are directed against the common order passed by the learned Commissioner of Income Tax (Appeals)-17, Chennai dated 15.07.2019 and pertain to assessment years 2013-14 (24Q-Q2 to Q4, 2014-15 (24Q-Q1 to Q4) and 2015-16(24Q-Q1 to Q4) . Since, the facts are identical and issues are common, for the sake of convenience these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee filed the following common grounds of appeal:-

(a) *The Commissioner of Income Tax (Appeals) erred in dismissed the appeal on the ground that the Petitioner did not give any specific reasons for the delay from 10.07.2015 to 29.03.2019, this is absolutely incorrect, in the grounds of appeal the Petitioner had pleaded that*

"The Petitioner humbly submits to the Ld. Commissioner of Income Tax (Appeals), that there is a delay in filing the appeal and requests the Ld. Commissioner of Income Tax (Appeals), to condone the delay due to the following facts.

At the time of introducing the sec 234E on Oct 2012 a lot of aggrieved deductors have approached the Court and the Income Tax Appellate Tribunal regarding the validity of Sec 234E of Income Tax Act 1961. Since there was ambiguity and no clear directions there was delay. Now with the Courts and ITAT have in year 2018 taken a clear stand on the above said matter the petitioner felt that the appeal can be filed now. Hence there was a delay in filing the appeal. Since the delay is due to the judicial process the petitioner once again humbly request the Ld. Commissioner of Income Tax (Appeals), consider this fact and condone the delay and allow the appeal in favour of the petitioner delay was not exconfirming that the moneys received by the Appellant on surrender of membership of the Madras Stock Exchange was assessable as Capital Gains."

However, The Commissioner of Income Tax (Appeals) is of the view that the above explanation is not sufficient to condone the delay.

b). In respect of the identical issue, the Hon'ble Income Tax Appellate Tribunal - Bangalore - IN THE CASE OF DR C FERNANDES CO-OPERATIVE ... VS DEPUTY COMMISSIONER OF INCOME TAX ... ON 17 JANUARY, 2019 Held that

6.0 CONDONATION OF DELAY IN FILING APPEALS BEFORE CIT(A)

6.1 On the issue of condonation of delay on the part of the assessee in filing these appeals before the CIT(A) in the case on hand, it is settled principle, upheld and followed in a catena of decisions that the expression "sufficient cause" ought to be interpreted in a manner which subserves and advances the cause of substantial justice. A case with arguable / favourable points / contentions on merits should not be shut out on the presumption of limitation, leading to such a case being thrown out at the threshold itself in limine. The Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST Katiji and Others (1987) 167 ITR 471 (SC), while laying down the principles for considering matters of condonation of delay in filing appeals, has stated that substantial justice should prevail over technical considerations. Considering the aforesaid principles laid

down by the Hon'ble Apex Court, the facts and peculiar circumstances of the case on hand, we are of the considered opinion that this is a fit case for condoning the delay in filing the nine appeals before the CIT(A).

6.2 In this regard, we have perused the judicial pronouncements cited by the learned DR for Revenue and are of the view that they are distinguishable on facts and are not directly applicable to the assessee's case"

Therefore as per the above stated decision of the Hon'ble ITAT Bangalore, this Hon'ble Tribunal may be allowed this Appeal.

c) Apart from the above grounds, During the course of Arguments before The Commissioner of Income Tax (Appeals), the petitioner had appeared and explained that the delay in filing the appeal due to the flood in the year of 2015, and Vardha cyclone, the entire office of the Petitioner had been affected, all the files are damaged. Since the water stayed in these areas for a long time, the physical impact of the flood was higher in these areas. However that ground was not considered by the Commissioner of Income Tax (Appeals)."

3. Brief facts of the case are that for the financial year 2012-13, 2013-14 and 2014-15, the assessee has filed TDS Quarterly returns in Form 24Q beyond due date specified under the Act. The Assessing Officer has assessed TDS quarterly returns filed by the assessee under section 200A and levied late filing fee under section 234E of the Act for the delay in filing the said statements for all the assessment years. The assessee has challenged the levy of late filing fee under section 234E before the learned CIT(A), but such appeals have been filed beyond due date specified under the Act. The assessee has filed petition for condonation of delay along with reasons before the CIT(A) and

requested to condone the delay in filing appeals to advance substantial justice on the ground that the issues involved on merits regarding levy of late filing fee under section 234E of the Act is now covered in favour of the assessee by various decisions, as per which there is no provision under the Act to levy late filing fee before insertion of section 200A by Finance Act, 2015 w.e.f 01.06.2015. The learned CIT(A) dismissed the appeals filed by the assessee on the ground that the assessee failed to adduce any reasons which comes under reasonable cause for condoning delay in filing appeals but merely stated that the issue on merits is covered in favour of the assessee . The learned CIT(A) further stated that unless the assessee explains the reasons for not filing appeals within time, the delay cannot be condoned merely on the ground the issue is covered in favour of the assessee. While doing so, he relied on the decision of ITAT, Mumbai Bench in the case of Krishna Developers Vs. DCIT (2019) 102 Taxmann.com 51(Mum). Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

4. We have heard learned counsels for both sides and perused material available on record along with the order of learned CIT(A).

We find that the learned CIT(A) has dismissed the appeals filed by the assessee without condoning the delay in filing appeals, even though the assessee has explained the reasons for delay in filing such appeals. According to the assessee, the assessee had filed appeals beyond due date for the reason that at the time of introducing section 234E by the Finance Act, 2015, there was an ambiguity and no clear directions regarding levy of late filing fee under section 234E of the Act for belated filing of TDS returns. However, in the year 2018 various High Courts and Tribunals have taken a clear stand and held that amendment made under section 200A of the Act with effect from 01.06.2015 is held to be having prospective in nature and hence no late fee can be charged u/s.234E of the Act, while processing TDS returns filed prior to 01.06.2015. Based on subsequent judgments of various Courts and Tribunals, the assessee felt that appeal can be filed against intimation issued by the Assessing Officer levying late fee u/s.234E of the Act. We further noted that the assessee has given above explanation before the CIT(A), however, the learned CIT(A) has not given any reason to discard the reasons given by the assessee for belated filing of appeals but simply dismissed the appeals filed by the assessee on the ground that the assessee did not bring any

material on record to establish that it had taken all possible steps to file appeals within prescribed time or within reasonable period. No doubt, it is duty of the assessee to file appeal within due date. In case, the appeal is not filed within due date prescribed under the Act, then it is for the assessee to give sufficient reasons which prevented from filing of appeal within due date, but the reasons given by the assessee shall come within the expression 'sufficient cause'. Various Courts and Tribunals have explained the term "sufficient cause". As per the settled principle a case that arguable /favorable points / contention on merits should not be shut out on the presumption of limitation, leading to such a case being thrown out at the threshold itself in limine. The Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs.MST Katiji and Others (1987) 167 ITR 471 (SC) while laying down principles for considering matters of condonation of delay in filing appeals have stated that substantial justice should prevail over technical considerations. The ITAT, Bangalore Bench in the case of Dr.C.Fernandes Co-operative Vs. DCIT(supra) held that sufficient cause ought to be interpreted in a manner which subserves and advances cause of substantial justice. In this case, on perusal of record, we find that the reasons given by the assessee for not filing

the appeals within the time allowed under the Act comes under the expression "sufficient cause" and hence, we are of the considered view that learned CIT(A) erred in not condoning the delay in filing appeals. Therefore, we condone the delay in filing appeals and restore the matter back to the file of the CIT(A) to decide the issues involved in these appeals on merits.

5. In the result, all the appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 26th October, 2020

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 26th October, 2020
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.