

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.330/Bang/2020: Asst.Year 2013-2014

ITA No.331/Bang/2020: Asst.Year 2014-2015

ITA No.332/Bang/2020: Asst.Year 2015-2016

Sri.Syed Mustafa Kamalpasha No.3, Queens Road Cross Near Congress Committee office Bangalore – 560 052. PAN : ADCPK8497N.	v.	The Dy.Commissioner of Income-tax, Central Processing Cell – TDS
(Appellant)		(Respondent)

Appellant by : Sri.Sanketh S.Nayak, CA

Respondent by :Smt.R.Premi, JCIT

Date of Hearing : 27.07.2021	Date of Pronouncement : 27.07.2021
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ORDER

Per George George K, JM

These appeals at the instance of the assessee are directed against consolidated order of the CIT(A), dated 27.08.2019. The relevant assessment years are 2013-2014, 2014-2015 and 2015-2016.

2. There is a delay of 106 days in filing these appeals. The assessee has filed petition for condonation of delay and also an affidavit stating therein the reasons for belated filing of these appeals. We have perused the reasons stated in the affidavit for filing the appeals belatedly. The assessee is a senior citizen and suffering from various health issues. The assessee is not able to look into the business activities which had caused the delay of 106 days in filing these appeals before the ITAT. The assessee has also produced medical certificate in this regard. In these facts and circumstances of

the case, we condone the delay of 106 days and proceed to dispose of the appeals on merit.

3. The solitary issue raised is whether the CIT(A) was justified in confirming imposition of late fee u/s 234E of the I.T.Act.

4. Brief facts of the case are as follow:

The assessee is an individual, engaged in the business of poultry. The assessee had filed quarterly returns of TDS for assessment years 2013-2014, 2014-2015 and 2015-2016. The Assistant Commissioner of Income-tax, Centralised Processing Cell (TDS) had passed an order u/s 200A of the I.T.Act, making the assessee liable for late fee u/s 234E of the I.T.Act.

5. Aggrieved by the late filing fee imposed u/s 234E of the I.T.Act, the assessee preferred appeals before the first appellate authority. The CIT(A) passed a consolidated order dismissing the appeals of the assessee for assessment years 2013-2014 to 2015-2016. The appeals were dismissed by the CIT(A) since the assessee had filed the appeals belatedly without any request for condonation of delay. The relevant finding of the CIT(A) reads as follow:-

“The appellant filed these appeals belatedly with the delay of 23 months (all these appeals were filed on 10.12.2018 against the orders served on 11.11.2016). However, it is seen from the appeal documents filed in form No.35, Column 14, the appellant has not made any request for condonation of delay in filing the appeals. Accordingly, these appeals are dismissed as having been filed beyond the limitation period.”

6. Aggrieved by the order of the CIT(A), the assessee has preferred these appeals before the Tribunal. The learned

Counsel for the assessee submitted that the orders imposing late filing fee u/s 234E of the I.T.Act is liable to be quashed, since the provision is not applicable prior to 01.06.2015. In this regard, the learned Counsel relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Fatheraj Singhvi v. Union of India* reported in [2016] 73 taxmann.com 252 (Karnataka). As regards the belated filing of appeal before the CIT(A), it was submitted that the assessee received a letter from the TDS department on 03.12.2018 indicating the outstanding demand which included 234E late fee. On informing the department regarding the judgment of the Hon'ble Karnataka High Court, cited supra, and requesting them to delete the demand, he was told to file an appeal. Accordingly, the assessee filed appeal within one week from the date of receipt of the letter from the TDS department. The assessee filed an appeal considering the letter received from the department and was under genuine and bonafide belief that there was no delay in filing the appeal before the CIT(A). Hence, did not file any condonation petition. Considering the above circumstances, it was submitted by the learned AR that the delay should be condoned and case should be decided on merits.

7. The learned Departmental Representative strongly supported the order of the CIT(A).

8. We have heard rival submissions and perused the material on record. On merits, the assessee's case is similar to the judgment of the Hon'ble jurisdictional High Court in the case of *Fatheraj Singhvi v. Union of India*, cited supra. As

regards non filing of condonation petition before the CIT(A), we noticed that the assessee was intimated vide letter from TDS department on 03.12.2018 indicating the outstanding demand which included 234E late fee. On informing the department regarding the judgment of the Hon'ble jurisdictional High Court, cited supra, and requesting for deletion of demand, the assessee was told to file an appeal. Accordingly, he filed an appeal within one week from the receipt of letter from the department. The assessee was under the bonafide belief that there was no delay in filing the appeal, hence, no condonation petition was filed. Even otherwise the CIT(A) prior to the dismissal of the appeal *in limine* for non filing condonation petition, ought to have intimated the assessee of the defects in the appeal filed by the assessee. In the interest of justice and equity, we direct the assessee to file condonation petition for the relevant assessment years. We remit the appeals to the files of the CIT(A) to consider the delay condonation petitions filed by the assessee and take a decision in the matter as expeditiously as possible. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 27th day of July, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 27th July, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-1, Bengaluru
4. The CIT (TDS) Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore