

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./ ITA Nos.596 & 597/Chny/2021

(निर्धारणवर्ष / Assessment Years: 2013-14 (26Q - Q2 & Q3))

M/s. Sai Sourcing Services, SF No.702/1A Indira Nagar, Seventhampalayam Road, Chandrapuram, Tirupur-641608. Tamil Nadu.	Vs	Assistant Commissioner of Income Tax, Central Processing Cell –TDS, Ghaziabad
PAN: ABJFS 7325Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	None
प्रत्यर्थी की ओरसे/Respondent by	:	Mr. AR.V.Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of hearing	:	24.02.2022
घोषणा की तारीख/Date of Pronouncement	:	24.02.2022

आदेश / ORDER

PER BENCH:

These two appeals filed by the assessee are directed against separate, but identical orders passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 28.09.2021 and pertain to assessment year 2013-14 – (26Q - Q2 & Q3). Since, 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. Brief facts of the case are that for the relevant Financial Year 2013-14 (26Q – Q2 & Q3), 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 amendment to 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.

3. At the time of hearing, none appeared for the assessee. Therefore, we proceed to dispose off the appeals after hearing learned DR and perusing materials 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 when the Department start levying late fee under section 234E, 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 before learned CIT(A) and restore the matter back to the file of the learned CIT(A) to decide the issues involved in these appeals on merits.

4. In the result, both these appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 24th February, 2022

Sd/- (वी. दुर्गा राव) (V.Durga Rao) न्यायिक सदस्य /Judicial Member	Sd/- (जी. मंजुनाथ) (G.Manjunatha) लेखा सदस्य / Accountant Member
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चेन्नई/Chennai,

दिनांक/Dated 24th February, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

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