

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.452/Chny/2021
निर्धारण वर्ष /Assessment Year: 2012-13

M/s.Optima Response-
Management Pvt. Ltd.,
No.17, Nawazish, Khadar Nawaz
Khan Road, Nungambakkam,
Chennai-600 006.
[PAN: AABCO 1589 J]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
TDS Ward-2(3),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Ramesh Pandian, Adv.
प्रत्यर्थी की ओर से /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 G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 09.09.2021 and pertains to assessment year 2012-13.

2. Brief facts of the case are that for the assessment year 2012-13, the assessee has filed TDS Quarterly returns beyond due date specified under the Act. The Assessing Officer has assessed TDS quarterly returns filed by the assessee under section 200A and levied

:: 2 ::

late filing fee under section 234E of the Act for the delay in filing the said statement for the assessment year. The assessee has challenged the levy of late filing fee under section 234E before the learned CIT(A), but such appeal has 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 appeal 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 appeal 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 appeal, 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 appeal 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 certain judicial precedents of the Hon'ble High Courts, including the decision of the Hon'ble Supreme Court in the case of Ramjas Foundation v. Union Bank of

:: 3 ::

India & Others [(2010) 14 SCC 38]. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

3. 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 appeal filed by the assessee without condoning the delay in filing appeal, even though the assessee has explained the reasons for delay in filing such appeal. According to the assessee, the assessee had filed appeal 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

:: 4 ::

reason to discard the reasons given by the assessee for belated filing of appeal but simply dismissed the appeal 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 appeal 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 appeal has 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

:: 5 ::

record, we find that the reasons given by the assessee for not filing the appeal 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 appeal. Therefore, we condone the delay in filing appeal before learned CIT(A) and restore the matter back to the file of the learned CIT(A) to decide the issues involved in these appeal on merits.

4. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced on the 24th day of February, 2022, in Chennai.

Sd/-
(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24th February, 2022.

TLN, Sr.PS

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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