

**In the Income-Tax Appellate Tribunal,
Agra Bench, Agra**

**Before : Shri Anil Chaturvedi, Accountant Member And
Sh. Laliet Kumar, Judicial Member**

**ITA No. 03 to 06/Agr/2022
Assessment year: 2012-13 & 2013-14**

Sh. Ram Prasad Verma Purva Madhyamic Vidhyalay Sonai, Mathura (U.P.) PAN: ABKAS4363E (Appellant)	vs.	ACIT CPC-TDS, Ghaziabad, U.P. (Respondent)
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Appellant by	Prathna Jalan, C.A.
Respondent by	Sh. Waseem Arshad, Sr. DR

Date of Hearing	22.03.2022
Date of Pronouncement	22.03.2022

Per Bench:-

1, These appeals are filed by the assessee feeling aggrieved by the order passed by the CIT(A) on the ground mentioned in the memo appeals, we are not reproducing herein below the ground raised by the assessee for the sake of brevity.

2. At the outset the Ld. AR for the assessee had fairly submitted that the appeals filed by the assessee before the CIT(A), with the delay of 2414 days. It was submitted by the Ld.AR AR that the lower authorities have not decided the application for condonation delay and have not accepted the ground for not preferring the appeals before the lower authorities. It was submitted that the assessee is a semi-government school and was not aware of the technicalities of filing the return of income, deduction of TDS, and was also not having the PAN card issued by the revenue authority. It was submitted that the lower authorities have not condoned the delay in filing the appeal and have dismissed the appeal is. It was

submitted that on merit the issue is covered in favor of the assessee by way of the decision of this tribunal as well as of the High Court.

3. The Ld.DR for the revenue had fairly submitted that though the issue is technically covered in favor of the assessee however on account of delay in filing the appeal before the CIT(A), the appeals of the assessee are required to be dismissed.

4. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at the bar during the course of the hearing by both parties. There was a delay in filing the appeal before CIT(A) and the delay in filing the appeal was stated to be medical issues of the Learned Counsel. Learned CIT(A) did not condone the delay in filing the appeal and thereby dismissed the appeal of the assessee without considering the merits of the case.

5. We find that Hon'ble Supreme Court in the case of N. Balakrishnan vs. M. Krishnamurthy (1998) 70 SCC 123 has held that as long as the conduct of the applicant does not, on the whole, warrant to castigate him as an irresponsible litigant, generally, the delay be condoned. It has further held that rules of limitation are not meant to destroy the right of parties but they are meant to see that parties do not resort to dilatory tactics. It has further held that in every case of delay there can be some lapse on the part of litigant concerned, however, that alone is not enough to turn down his plea and to shut the door against him. Further it is a settled law that in matters of condonation of delay, a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted and a party should not be made to suffer on account of technicalities. Before us, no material has been placed by Revenue to demonstrate that the delay in filing the appeal before CIT(A) by the assessee was due to some malafide intention on its part. We may further note that the issue involved in the present set of appeals, are fairly covered in favor the assessee, as admitted by the

representative for the revenue and also on account of the submission made before us by the Ld.AR. as the issue is covered in favor of the assessee and also on account of the aforesaid peculiar facts, we are of the view that the delay in filing the appeal before CIT(A) needs to be condoned. We accordingly condone the delay. As we have condoned the delay, and the issue involved is covered in favor of the assessee, therefore we do with appropriate to adjudicate the appeals on merit also, this is with a view to save the legal system from unnecessary litigation, on account of which the system is choking and there is delay in adjudication of the real issues.

6. Since, there is a common issue being involved in all these appeals, hence they are being disposed of by this consolidated order for the sake of convenience and brevity, after condoning the delay. We have heard the Ld. Counsel of both side i.e. Assessee and Revenue for all the cases.

7. The common issue involved in these appeals is that the AO imposed late fees u/s 234E of the Act., where the enabling clause (c) was inserted in the section 200A w.e.f. 01.06.2015. Which has been confirmed by the Ld. CIT(A) relying on the of Hon'ble Gujarat High Court in the case of 'Rajesh Kaurani vs. Union of India', 83 Taxmann.com 137(Guj).

8. Having heard both the parties and considering the facts of all these appeals as to whether late filing fee u/s 234E of the Act has rightly been charged in the intimation issued u/s 200A/206CB of the Act while processing the TDS returns/statements as the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. We understand that earlier, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for a period up to 31.03.2015, no late fee could be levied in the intimation issued u/s 200A of the Act.

9. On similar facts, the same issue has been adjudicated by the Co-ordinated bench ITAT Agra, in the case of 'Sudershan Goyal vs. DCIT (TDS)' in ITA No. 442/Agra/2017 vide order dtd. 09.04.2018. The relevant part of the order is reproduced as follows:

“3. Heard. The Id. CIT(A), while deciding the matter against the assessee, has placed reliance on ‘Rajesh Kaurani vs. UOI’, 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The Id. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in ‘Rajesh Kaurani’ (supra) holds the field.

4. We do not find the view taken by the Id. CIT(A) to be correct in law. As against ‘Rajesh Kaurani’ (supra), ‘Shri Fatehraj Singhvi and Others vs. UOI’, 73 Taxmann.com 252 (Ker), as also admitted by the Id. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the Id. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon’ble Gujarat High Court while passing ‘Rajesh Kaurani’ (supra). However, while observing so, the Id. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon’ble Supreme Court in ‘CIT vs. Vegetable Products Ltd.’, 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In ‘Shri Fatehraj Singhvi and Others’ (supra) it has been held, inter alia, as follows:

“22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under

Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest.”

6. In view of the above, respectfully following ‘Shri FatehrajSinghvi and Others’ (supra), ‘Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)’, order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and ‘Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad’, order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled.”

10. In the above view, respectfully following ‘Shri FatehrajSinghvi and Ors’ (Supra), and our own finding in the case of ‘Sudershan Goyal’ (Supra), we accept the grievance of the assessee as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under section 234E of the Act is cancelled.

11. In the result, all the appeals are allowed.

(Order pronounced in the open Court on 22/03/2022)

Sd/-

(Laliet Kumar)
Judicial member

Sd/-

(Anil Charturvedi)
Accountant Member

Dated: 22ndMarch, 2022

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Copy of order forwarded to:

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Agra Bench, Agra

		Date	
1.	Draft dictated / (DNS)	22.03.2022	PS
2.	Draft placed before author	22.03.2022	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	22.03.2022	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	22.03.2022	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		