

**IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH, VARANASI  
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA Nos.7&8/VNS/2022  
AYs: 2014-15 & 2015-16**

Pratap Diagnostic Center, 573, Civil Lines, Azamgarh, Sadar, U.P. PAN-AAKFP8828M	v.	ITO (TDS), Azamgarh
(Appellant)		(Respondent)

Appellant by:	Shri. Pankaj Choubey, C.A.
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	4.7.2022
Date of pronouncement:	4.7.2022

**ORDER**

**PER VIJAY PAL RAO, J.M.**

These two appeals by the assessee are directed against the composite orders of the CIT(A) dated 9.12.2019 arising from the order passed by the Assessing Officer under section 201(1) and 201(1A) of the Income Tax Act for the assessment years 2014-15 and 2015-16, respectively. There is a delay in filing the two appeals by the assessee. The learned AR of the assessee has explained that initially the assessee has filed the appeal in ITA No. 43/VNS/2020 against the composite order of the CIT(A). However, subsequently when it was realized that separate appeals are required to be filed for each assessment year, the assessee has filed the present appeals. The learned AR has submitted that due to bonafide mistake, these two separate appeals were filed by the assessee after expiry of limitation period. He has further submitted that due to Covid-19 pandemic prevailing for last two years, the limitation was extended by Hon'ble Supreme Court by excluding the period w.e.f. 15<sup>th</sup> March, 2020 to 28<sup>th</sup> February,

2022 and thereafter the Hon'ble Supreme Court has allowed 90 days for filing the Appeals, Writ, Suit and Application etc,. Thus the learned AR has pleaded that delay in filing the present appeals may be condoned.

2. On the other hand, the learned DR has opposed the condonation of delay.

3. We have considered the rival submissions as well as relevant material on record. We find that the CIT(A) has passed the impugned order on 9.12.2019 which was received by the assessee on 24<sup>th</sup> December, 2019. The impugned order of the CIT(A) has disposed of two appeals for the assessment years 2014-15 and 2015-16 against which initially the assessee has filed one appeal in ITA No. 43/VNS/2020 within the period of limitation. Thereafter, when it was pointed out that the assessee is required to file separate appeals for each assessment years, the assessee filed these two appeals on 27.4.2022. The limitation for filing these appeals though expired on 24<sup>th</sup> February, 2020 and thereafter the Hon'ble Supreme Court in *Suo Moto* Writ Petition (C) No. 3 of 2020, vide order dated 23.03.2020 directed the extension of period of limitation of the proceedings before Courts / Tribunals including the Hon'ble Supreme Court w.e.f. 15.3.2020 till further orders. This extension of period of limitation was further extended by Hon'ble Supreme Court from time to time and finally it was extended upto 28<sup>th</sup> February, 2022. The Hon'ble Supreme Court further clarified that in cases where the limitation would have expired during the period between 15.3.2020 till 28.2.2022, notwithstanding the actual balance period of limitation remaining all persons shall have a limitation period of 90 days from 1.3.2022. It was further clarified that the period from 15.3.2020 till 28.2.2022 shall also stand excluded in computing the period prescribed under various statutes and law which prescribe period of limitation for instituting proceedings, outer limitation (within which the Court or Tribunal can condone the delay) and termination of the proceedings. Thus the Hon'ble Supreme Court, vide order dated 10<sup>th</sup> January, 2022 has directed to exclude the period of limitation from 15.3.2020 to 28.2.2022 while

computing the period of limitation prescribed under statutes and other laws for institution of the proceedings. In the case in hand, the assessee has explained that originally the assessee has filed the one appeal within the period of limitation against the impugned composite order of the CIT(A) and therefore, the filing of the separate appeals by the assessee belatedly is due to bonafide belief and mistake on the part of the assessee. We find that once the assessee has filed the appeal in ITA No. 43/VNS/2020 within the period of limitation, then the intention of the assessee is clearly manifest that the delay in filing these two appeals is neither willful nor deliberate but due to the reasons as explained by the learned AR of the assessee. Accordingly, we are satisfied with the reasons as explained by the learned AR that the assessee was having a reasonable and sufficient cause to file these appeals belatedly and hence, we condone the delay in filing these two appeals.

4. The assessee has raised the common grounds:-

*"1. Because the learned Assessing Officer has erred in law and on facts in passing the impugned order u/s 201/201(1A) dated 31.03.2017 without allowing proper opportunity of hearing to the appellant and hence suffers from natural justice.*

*2. Because the learned AO has erred on facts and in law in not mentioning the specific item of default of appellant as to on which item there should have been TDS which has escaped deduction chapter XVII of I.T. Act relating to TDS.*

*3. Because the learned AO has erred in mentioned all the expenses under various heads debited to P&L A/c mentioning without evidence that on these items the TDS should have been made.*

*4. Because the learned AO has not brought on record the material evidence to prove the default of TDS on the part of the appellant.*

*5. Because the order u/s 201/201(1A) dated 31.03.2017 passed by the learned AO is erroneous in law, without evidence and contrary to the facts on record.*

*6. That the Ld. CIT(A) has erred in law as well as on facts in confirming the addition made in the assessment order passed under section 201/201(1A) dated 31.03.2017 (impugned order) passed by the ld. AO.*

7. Because the Hon'ble CIT Appeal has erred in law and on facts in passing the impugned order u/s 201/201(1A) dated 31.03.2017 without allowing proper opportunity of hearing to the appellant and hence suffers from natural justice.

8. Because the impugned order being erroneous in law, contrary to facts on record, being without evidence and against natural justice deserves to be vacated."

5. The learned AR of the assessee has submitted that the AO as well as CIT(A) has passed the impugned orders *ex parte* and the CIT(A) has not decided the appeal of the assessee on merits but the same were dismissed for non prosecution in *limine*. The learned AR has pointed out that the AO has passed the orders under section 201(1) and 201(1A) holding the assessee in default due to non deduction of TDS on various amounts paid by the assessee. He has referred to the details of the various payments made by the assessee and submitted that the majority of these payments are not subjected to TDS under sections 194C, 194A, 194I and 194J as concised by the AO. For instance, the learned AR has submitted that the interest paid to the banks is not subjected to TDS under section 194A of the Income Tax Act. The AO has also not allowed the credit of TDS *challan* that the assessee has already deposited under various sections. The learned AR has submitted that the assessee has deposited the *challan* as required by the statute and also filed the return of TDS but the TDS return has not been considered by the AO while passing the impugned order. Thus the learned AR has pleaded that the matter may be set aside to the record of the AO for considering the correct facts and applicability of the TDS provisions in respect of the various payments made by the assessee.

6. On the other hand, the learned DR has submitted that despite various opportunities, the assessee did not appear before the AO as well as CIT(A) and hence ,the assessee should not be given any further opportunity.

7. We have considered the rival submissions as well as relevant material on record. At the outset, we note that the CIT(A) has dismissed the appeal of the assessee in *limine* for want of prosecution and relevant part of the order of CIT(A) is as under:-

*“5. The aforesaid non-compliance on part of appellant reveals beyond doubt that appellant has nothing to say in the matter of this appeal. It can be concluded that appellant is not interested in prosecution of the present appeal and same is liable to be dismissed on this ground itself. The law assists those who are vigilant and not those who sleep over their rights. This principle is embodied in well known dictum “VIGILANTIBUS, NON DORMENTIBUS, JURA SUBVENIUNT”. In view of the above mentioned facts and by placing reliance on decision of Hon'ble ITAT, Delhi Bench in case of CIT vs. Multiplan India Ltd. reported in 38 ITD 320 and decision of Hon'ble M.P. High Court in case of Estate of Late TukojiRaoHolkar vs. CWT (1997) reported in 223 ITR 480 the present appeal is liable to be dismissed.”*

8. Thus, it is clear that the CIT(A) has not decided the appeal of the assessee on merits which is contrary to the provisions of section 250(6) of the Income Tax Act. Further, the assessee has pointed out that various payments made by the assessee against which the AO has held the assessee in default under section 201(1) and 201(1A) of the Income Tax Act are not subjected to TDS. He has referred to the payments under various head and submitted that the AO has not even considered and verified the payments which are not subjected to TDS. Further the learned AR has submitted that wherever the TDS is required to be deducted, the assessee has deducted the TDS and also filed the TDS return which was also not considered by the AO while passing the impugned order.

9. Accordingly, having regard to the facts and circumstances of the case and in the interest of justice, we set aside the impugned order of the CIT(A) and remanded the matter to record of the AO for deciding the same afresh, after considering the claim of assessee that various payments made by the assessee are not subjected to TDS and further the assessee has also deposited the TDS

under various sections and filed the TDS return. The details of the same are to be filed by the assessee. Needless to say the assessee be given an opportunity of hearing before passing the fresh order.

10. In the result, the appeals of the assessee are allowed for statistical purpose.

Order was pronounced in the open court after conclusion of hearing on 4.7.2022.

***Sd/-***

**[RAMIT KOCHAR]  
ACCOUNTANT MEMBER**

DATED:04/7/2022

Varanasi  
sh

***Sd/-***

**[VIJAY PAL RAO]  
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant- Pratap Diagnostic Center
2. Respondent-ITO (TDS), Azamgarh
3. CIT(A), Varanasi
4. CIT
5. DR

By order  
Sr. P.S.