

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, 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 No.957/Chny/2020**

(निर्धारणवर्ष / Assessment Year: 2014-15)

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| Mr. Surya Kannan Plot No.21, 5/308,Viman Nagar, Pozhichalur,Chennai-600 074. | Vs | The Income Tax Officer TDS Ward-3(1) Chennai. |
| PAN: ANVPK 3824E | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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

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| सुनवाई की तारीख/Date of hearing | : | 25.08.2022 |
| घोषणा कीतारीख /Date of Pronouncement | : | 25.08.2022 |

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the Commissioner of Income Tax (Appeals)-17, Chennai dated 22.09.2020 and pertains to assessment year 2014-15.

2. At the outset, we find that appeal filed by the assessee is time barred by 2 days. Since, delay in filing of appeal is mainly due to lockdown imposed by the Govt. on account of spread of Covid-19, delay in filing appeal by the assessee is condoned in the interest of advancement of substantial justice, after hearing the learned DR and hence, appeal filed by the assessee is admitted for adjudication.

3. Brief facts of the case are that for the relevant assessment year 2014-15 [Financial Year 2013-14 (26Q – Q1 Q2, Q3 & Q4,)] 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 Income Tax Act, 1961 [“Act” in short] for the delay in filing the said statements for all the assessment year. The assessee has challenged the levy of late filing fee under section 234E of the Act 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 of 1399 days 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 appeals filed by the assessee as not admitted on the

ground that the reasons for the delay in filing of appeals cannot be stated to be 'beyond the control of the assessee' and accordingly, rejected plea of the assessee for condoning delay in filing the appeals. While doing so, the CIT(A) relied on various decisions of the Hon'ble High Courts, including decision of the Hon'ble High Court of Madras in the case of P.S.Rajeswari Vs. ACIT (2015) 373 ITR 464(Mad). Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

4. At the time of hearing, none appeared for the assessee, despite notice. Since, the issue involved in the appeal is squarely covered, we proceed to dispose of the appeal on merits, after hearing the learned DR, and considering materials available on record and gone through the orders of authorities below. 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 reasons for the delay in filing of appeals cannot be stated to be 'beyond the control of the assessee'. 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 /favourable 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 appeal before learned CIT(A) and restore the matter back to the file of the learned CIT(A) to decide the issue involved in the appeal on merits.

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

Order pronounced in the open court on 25th August , 2022

Sd/-

(वी. दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य /Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 25th August, 2022

DS

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

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.