

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 452/JP/2019
निर्धारण वर्ष / Assessment Year : 2014-15 (24Q, 2nd Qtr)

AEN (VIG)-1, AVVNL Jhunjhunu, Sikar, Jhunjhunu, 333 001	बनाम Vs.	The DCIT, CPC (TDS), Ghaziabad
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JPRA 03122A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 25/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 15/09/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A)-3, Jaipur dated 28-03-2018 for the assessment year 2013-14 (Qtr. 2nd) wherein the assessee has raised the following ground of appeal.

“In the facts & circumstances of the case the Ld. CIT Appeals Jaipur has erred in not admitting the appeal for LATE FEES imposed u/s 234E Under clause c of subsection 1 of 200A.

1.The assessee has Filed an appeal with Ld CIT(appeals) Jaipur which was manually filed against the Order of DCIT CPC(TDS) for levy of late Fees of Rs16780/- For financial Year 24q2-2013-14.

2. The Ld CIT(appeals) has erred in dismissing Appeal as not admitted the appeal on the ground that the E-appeal was not filed. The date of hearing was Fixed on 27/03/2018.
3. The Assesee tried to E-file but due to Technical reason of Non Generation of OTP it was not Able to file. An adjournment Letter was also dispatched on 26/03/2018 ,but the appeal was dismissed.
4. The Ld CIT(A) has erred in dismissing Appeal as not admitted without considering the case on merits. Refusing to Accept has result in a meritorious matter being thrown out at the very threshold and cause of justice
5. As per provision of Sec. 234 E late fee cannot be recovered for TDS statements which were due for FY 2012-13 as well on TDS statements late fee cannot be recovered for FY-12-13 if not collected at the time of delivering TDS statements to the depts. Provision of Sec. 234 E has been made applicant with effect from 1st July 2012. It states that "Amount of late fee shall be paid before delivering a TDS statement". It means that any late fee should have fee deposited just at the time of delivering TDS statements & not later than this. The authorized TIN-NSDL centre which accepted the TDS statements also accepted there without late fee, as well as the software utility of the TDS depts. itself accepted these without late fee.
6. The Tax was deducted & Deposited in time, the only default is delay in filing of the return, the alleged delay in filing the TDS statement has not resulted in any loss of revenue to the department and, therefore, the default, if any, was purely venial breach. The assessee was being government company working in public interest and there was no mala fide intention of not filing the TDS return at source within time. That when the TAX had been deposited in time, there could not have any object or intention as the part of assessee not to submit the return in time.
7. The Ld CIT (APPEALS) erred in not following the provision of Section 200A in sub section (1) as clause 'c to e' substituted from 01/06/2015 so in the light of amendment "The adjustment in respect of levy of fees under section 234E was indeed beyond scope of permissible adjustments contemplated under Section 200A" hence the same should be deleted.
8. The Ld CIT (APPEALS) erred in not relying on the Judgement of various ITAT benches, mentioned in written submissions.
9. In the facts & circumstances of the case the Ld CIT (APPEALS) erred in confirming the order of AO imposing late fee without appreciating the facts & circumstances of the case and hence the same should be deleted.

10. That the order is bad in law.

11. The appellant carves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal with the prior permission of the chair.”

2.1 At the outset of the hearing, the Bench noted that none appeared on behalf of the assessee when the case was called for hearing. The Bench further noted that there was delay of 303 days in filing the appeal by the assessee for which no condonation application as to the late filing of appeal for 303 days has been filed by the assessee. On the contrary, the Id. DR was ready to argue the case. In this situation, the Bench decided to hear the appeal of the assessee ex-parte.

2.2 The Bench heard the Id. DR and perused the material placed on record. The Bench noted while hearing the appeal of the assessee that the Registry had pointed out certain defects for which notices were served upon the assessee but the defects raised by the Registry were not removed/ rectified by the assessee. Apart from this, there is delay of 303 days in filing the appeal by the assessee and no separate application for seeking condonation of delay has been moved by the assessee. It is also pertinent to mention that the appeal of the assessee was dismissed by the Id. CIT(A) by observing as under:-

“2. The hearings in this case was initially fixed for 19.02.2018, but on the appointed date neither appellant attend nor filed any adjournment letter. The notice again issued fixing for hearing on 13.03.2018, but on the appointed date neither appellant attend nor filed any adjournment letter. The notice again issued fixing for hearing on 27.03.2018 issuing a letter as under:

"On verification of record it is found that you have not filed e-appeal. The IT. Rule 45(1) amended from 01.03.2016 but you have not filed the e- appeal. Therefore you are requested to file an e-appeal, otherwise your appeal filed manually will be treated as unrest."

The notice was duly served on the appellant.

3. On appointed date neither appellant attended nor filed any sdjournment letter. The appellant failed to file the e-appeal after giving opportunity. Therefore the manual appeal filed by the appellant treated as antrest

4. In the result, the appeal is dismissed.’’

Looking to the totality of the facts and circumstances of the case, the Bench finds that there is no separate application by the assessee for condonation of delay of the appeal by 303 days and moreover the defects pointed out by the Registry from time to time on various occasion have not been removed/ rectified by the assessee, hence the present appeal filed by the assessee stands rejected.

3.0 In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15 /09/2022

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 15/09-/2022

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- AEN (VIG)-1, AVVNL Jhunjhunu, Sikar,
2. प्रत्यर्थी / The Respondent- DCIT ,CPC, (TDS), Ghaziabad
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 452/JP/2019)

आदेशानुसार / By order,

Asstt. Registrar