

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.715 to 721/Hyd/2022		
Assessment Years: 2013-14 to 2015-2016		
Shri Suresh Samat (HUF) Secunderabad PAN:AANHS2539H (Appellant)	Vs.	Dy. C.I.T. Ward 10(1) Hyderabad (Respondent)
Assessee by:	Shri Sanjay Muttha, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	25/01/2023	
Date of pronouncement:	25/01/2023	

ORDER

Per Bench:

These seven appeals filed by the assessee are directed against the order dated 15/07/2012 of the learned CIT (A)-NFAC Delhi relating to A.Ys. 2013-14 to 2015-2016. Since common issues are involved in all these appeals, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. ITA No.715/Hyd/2022 for the A.Y 2013-14 is taken as a lead case and the grounds raised by the assessee reads as under:

“a) The Commissioner appeals erred in not condoning the delay in filing of appeal filed before him as he has not appreciated the facts and reasons appropriately.

b) The Commissioner ought to have allowed the appeal in line with the many judgments including that of the Hon'ble Income Tax Tribunal Hyderabad that levy u/s 234E cannot be levied by an order u/s 200A prior to 1/6/2015.

c) Any other grounds as may be pleaded”.

3. Facts of the case, in brief, are that the assessee being aggrieved against the order dated 08.12.2013 in Form 35 for the financial year 2012-13 relevant to A.Y 2013-14 u/s 200A of the I.T. Act passed by the Assessing Officer/Asstt. Commissioner CPC-TDS. Thereafter, in terms of notification No.139/2021/F.No.370142/66/2021-TPL, dated 28.12.2021, the appeal was migrated to the National Faceless Appeals Centre and is dismissed by the NFAC Delhi on account of delay in filing rectification application and also condonation application for condonation of the huge delay. Feeling aggrieved by the order passed by the assessee, the assessee is in appeal before the Tribunal. At the outset the learned Counsel for the assessee submitted that there a delay of 92 days in filing of the appeal before the Tribunal and in this regard the assessee submitted one page note which reads as under:

Submissions in the Appeal No. ITA 715/Hyd/2022 relating to Assessment Year 2013-14, Quarter 2, Form 26Q before the Honorable Income tax Appellate Tribunal, Hyderabad

1. The delay in filing of the appeal before the commissioner appeals is as detailed

Period of delay	Number of days	Reasons for the delay	Remarks
8-12-2013 to 19-3-2018	1562	Application for rectification under Sec 154 was filed after the law in respect of applicability of Sec 234E prior to 01/06/2015 got settled by virtue of decisions by various high courts and Tribunals	Letters seeking rectification u/s 154 filed on 19/3/2018 is enclosed herewith.
20-3-2018 to 22-04-21	1130	Period of time taken by the CPC to pass orders	Follow up letter on 24/03/21 seeking relief and then rectification orders u/sec 154 dated 22/04/2021 is enclosed
23-04-21 to 8-12-2021	230	Covid related disruptions	In the Miscellaneous Application no 21 of 2022 in Miscellaneous petition no 665 of 2021 in Suo Moto Writ Petition (C) no 3 of 2020 before the supreme court, , the Honorable court has directed that "the period from 15/03/2020 till 28/02/2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings" The copy of the order is attached herewith

In view of the above it is prayed that the delay in filing of appeal before the commissioner (appeals) be kindly condoned and suitable directions on merit be given and relief granted to the assessee

2. The Honorable Hyderabad Income Tax Appellate Tribunal in the following cases has also adjudicated setting aside the late filing fees charged u/sec 234E prior to 01/06/2015
- M/s Priyadarshini Limited V/s
Additional Commissioner of Income Tax
 - M/s Cosyn Limited (Formerly CSS Technergy Limited) V/s
Dy. Commissioner of Income Tax



4. Per contra, learned DR drew the attention of the Bench to Para 6 to 6.3 to the order of the CIT (A)-NFAC which reads as under:

“6 In respect of the request for the condonation of delay of 2892 days (after excluded 30 days as per section 249(2)(b) of the Act) in the filing of this appeal on the grounds that the delay in filing of appeal was on account of him seeking remedy u/s 154 of the Act and as he was unable to get any order from the department, the appeal has been filed which delay for this reason was requested to be condoned (refer para 2.1 above).

6.1 Examination of Form 35 filed shows that the appellant filed with it a copy of a letter dated 10.01.2014 to ITO TDS-15(2), Hyderabad requesting only for waiver of 234 E fees in respect of form 260, Quarter 3 F.Y. 2012-13 and there is no mention of any rectification u/s 154 being requested. Copy of application u/s 154 dated 19.03.2018 before ITO TDS-2(2), Hyderabad was also filed by the appellant in respect of rectification u/s 154 of late filing fees u/s 234E for A.Y. 2013-14, 2014-15 and 2015-16 without specifically mentioning which order is sought to be rectified, in 6.1 respect of which form, and of which quarter-thus making the application general, vague and without enclosures. Even this application u/s 154 was only made for the first time on 19.03.2018 i.e. 1562 days after the receipt of the order u/s 200A on 08.12.2013. No copy of reminder letter dated 24.03.2021 as stated in statement of facts has been filed by the appellant during this appeal.

6.2 Further, it is seen that as per order u/s 154 of the Act dated 22.04.2021, the appellant filed the rectification application before TDS, CPC on 22.04.2021 in respect of 26 Q, Quarter 2 of F.Y. 2012-13 and this 154 application was dealt with vide order u/s 154 dated 22.04.2021 of TDS, CPC. A point to be noted here is that in the letter dated 10.01.2014 (refer para 6.1 above) the request is for waiver for 234E in respect of Form 26Q Quarter 3 and not for 26Q Quarter 2.of F.Y. 2012-13 of order u/s 154 and thus this letter dated 10.01.2014 is not relevant in respect of this appeal. It is thus clear that the appeal should at least have been filed within 30 days of the receipt of the 154 order dated 22.04.2021 if not within 30 days of the order u/s 200A appeal against. However, the appeal was filed on 08.12.2021 i.e. was delayed by 200 days from the 154 order after excluding the 30 days provided for the filing of the appeal. Therefore, delay of only 1130 days can be explained by the reason given for the condonation for delay i.e. pending application u/s 154. Accordingly, the appellant has been unable to account for the delay of 1762 days (1562 days after the receipt of the order u/s 200A till filing the rectification on 19.03.2018 discussed in para 6.1 above and delay of 200 days since the receipt of the order u/s 154 although the appeal is against order u/s 200A dated 08.12.2013).

6.3 As stated in para 5 above, the appellant was provided enough opportunities by way of notices to show how the reason stated by it for

the delay should be accepted by supporting the same with details of action if any taken by it. However, it failed to use the opportunities provided by not furnishing any of the documents required in these notices. Other than filing the case laws, no details were furnished by the appellant to substantiate reasons for the delay of 1762 days in the filing of this appeal. Section 249(3) of the Act provides for admission of delayed appeal if the Commissioner (Appeal) is satisfied that the appellant had 'sufficient cause' for not presenting the appeal in time. Condonation of delay in filing of appeal is not a matter of right. For the delay of 1762 days to be condoned, the appellant is required to show existence of sufficient cause for the delay. Therefore, the appellant has failed to show reasons of delay on last day of limitation and thereafter for each day till the filing of the appeal. The appellant has therefore not acted with reasonable diligence in the filing and in the prosecution of this appeal and failed to satisfactorily explain the cause of this delay. In the absence of the same, the request for condonation of delay cannot be acceded to. Accordingly, no "sufficient cause" was shown by the appellant to explain the long delay in filing this appeal. Therefore, in view of all of the above i.e. the non-removal of the deficiency and non-condonation of delay the appeal is not admitted and is dismissed in limine."

5. The learned DR also submitted that there is a delay of 92 days in filing of the appeal before the Tribunal and the reasons for condoning the delay does not fall within the category of satisfactory reasons. Further, there was a delay of 2892 days in filing the appeal before the learned CIT (A). He drew the attention of the Bench to the reasons given in the letter which is to the following effect:

To
The Honorable Income Tax Appellate Tribunal
Hyderabad

Respected Sir's

Reg: Condonation request for delay of 98 days in filing of appeal

We shall be grateful if the delay in filing of the appeal is kindly condoned. We wanted our auditors to take advise from other senior counsels to ensure that the appeal is well represented and justice is given to us. We understand that because the last dates for filing of income tax returns were various dates from sept 30th to 30th november the efforts of the auditors got delayed as they were occupied for completing compliance for other assessee's. We shall be obliged if our request is considered favorably.

Thank you

Yours Sincerely



Suresh Samat

(KARTHA OF HUF)

6. It was the contention of the learned DR that the present appeals be dismissed.

7. We have heard the rival arguments made by both the sides, perused the material available on record. In the present case, the Assessing Officer/CPC has passed the order on 8.12.2013 on account of violation of section 234E of the Act. The assessee after passing the order chosen not to challenge the order before the learned CIT (A) and ultimately after lapse of 1562 days, filed an application for rectification u/s 154 of the Act on 19.3.2018 before the Assessing Officer. As per section 154 of the Act, said application was required to be filed within a period of 4 years from the date of passing of the order. However, for the reasons best known to the assessee, the said application was not filed before the Assessing Officer within time. As the case may be the said application remained pending with the CPC for a period between 20.03.2018 to 22.4.2021. The assessee in between has

also written a reminder letter to the CPC on 24.3.2021. Thereafter, the CPC had passed an order on 22.4.2021 thereby dismissing the application u/s 154 filed by the assessee for rectification. The above facts clearly shows that the assessee was having the availability of initial order which was required to be assailed in accordance with law. However, for the reasons best known to him, he has not challenged the order either by filing the appeal or filing rectification application. Even the rectification application was filed after a period of 1582 days which was decided against the assessee on 22.4.2021. Against the rectification order, assessee filed appeal before the learned CIT (A) on 8.12.2021. The learned CIT (A) dismissed the appeal being highly time barred vide the impugned order dated 15.7.2022. The delay in filing of the appeal before the learned CIT (A) have further been compounded, as the present appeal before us was only filed by the assessee on 20.12.2022 after delay of 92 days.

8. From the conduct of the assessee it is clear that there was deliberate decision of the assessee not to challenge the order of the CPC within the statutory period of 30 days and was filed after a substantial delay of 2892 before the learned CIT (A). By any reasons, the delay in filing the appeal before the learned CIT (A) cannot be considered to be a reasonable or plausible ground and we cannot conclude that the assessee was prevented by any reasonable cause for not preferring the appeal before the CIT (A) or before the Tribunal.

9. Lastly, it will be apposite to mention here that in the reasons for condonation of delay, it is mentioned that the assessee is deliberating with the Sr. Advocate on this issue.

10. Further during the course of argument, it was submitted that the assessee was expecting a favorable order from the Hon'ble High Court. At this juncture it is essential to note that the first decision which was rendered by the Hon'ble Karnataka High Court was reported in Fateh Raj Singh vs. Union of India (2016) 289 CTR 602 and thereafter the decision of the Gujarat High Court in the case of Rajesh Kurani vs. Union of India reported in 83 Taxmann.com 137. These two decisions were available with the assessee much prior to the filing of the rectification application. Therefore, despite availability of the orders of the High Courts and also orders passed by the Tribunal, the assessee have not challenged the order before the learned CIT (A) or before the Tribunal. In view of the matrix of the facts we are of the considered opinion that the assessee has failed to establish a reasonable cause for not filing the appeal before the learned CIT (A) or before the Tribunal within the statutory period as specified in the Act. Consequently, we do not find any reason to condone the delay and accordingly the delay in filing the condonation application/delay petition by the assessee is dismissed. As we have dismissed the delay petition filed by the assessee, we do not find any reason to sustain the present appeal. Thus, appeal No.715/Hyd/2022 for the A.Y 2013-14 is dismissed.

11. In the remaining six appeals issues involved are same, hence following similar reasonings, the remaining six appeals filed by the assessee are dismissed.

12. In the result, all the seven appeals filed by the assessee are dismissed.

Order pronounced in the Open Court on 25th January, 2023.

Sd/- (R.K. PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
--	--

Hyderabad, dated 25th January, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Suresh Samat (HUF) Plot No.16, 2 nd Floor, Devisharan Apartments, PG Road Secunderabad 500003
2	Dy. CIT, Ward 10(1) Hyderabad
3	CIT (A)-NFAC Delhi
4	Pr. CIT-, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order