

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.53 to 57/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Physical Court Hearing)

Airlink Communication Pvt. Ltd. 1-2, Annapurna Shopping Centre, 1 st Floor Aadajan Patia, Surat- 395009	Vs.	Asst./Dy. Commissioner of Income Tax, Circle, TDS, Aaykar Bhavan, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAUFR 6898 R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.66/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2014-15)

Airlink Communication Pvt. Ltd. 1-2, Annapurna Shopping Centre, 1 st Floor Aadajan Patia, Surat- 395009	Vs.	Income Tax Officer, (TDS-1) Aaykar Bhavan, Room No.402, Anavil Business Centre, Opp. Star Bazar, Adajan Road, Surat-395009
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFR 6898 R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.58 to 61/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2016-17)

Airlink Communication Pvt. Ltd. 1-2, Annapurna Shopping Centre, 1 st Floor Aadajan Patia, Surat- 395009	Vs.	Asst/Dy. Commissioner of Income Tax, Circle TDS, Aaykar Bhavan, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFR 6898 R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.62/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2017-18)

Airlink Communication Pvt. Ltd. 1-2, Annapurna Shopping Centre, 1 st Floor Aadajan Patia, Surat-	Vs.	Asst/Dy. Commissioner of Income Tax, Circle TDS, Aaykar Bhavan, Surat-395001
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395009		
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFR 6898 R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

आयकर अपीलसं./ITA No.63 & 67/SRT/2023
(निर्धारणवर्ष / Assessment Year: (2018-19))

Airlink Communication Pvt. Ltd. 1-2, Annapurna Shopping Centre, 1 st Floor Aadajan Patia, Surat- 395009	Vs.	Asstt/Dy. Commissioner of Income Tax, Circle TDS, Aaykar Bhavan, Surat-395001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAIFR 6898 R		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.M.Jagasheth, C.A
राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाई की तारीख/ Date of Hearing : 19/04/2023
घोषणा की तारीख/Date of Pronouncement : 21/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

This is bunch of thirteen appeals, filed by the single assessee, pertaining to assessment years 2013-14, 2014-15, 2016-17, 2017-18 and 2018-19, all are directed against the separate orders passed by the National Faceless Appeal Centre Delhi (for short 'NFAC')/Ld. CIT(A), all dated 18.11.2022, which in turn arise, out of separate penalty orders passed by the Assessing Officer under section 200A of the Income Tax Act, 1961 (in short 'the Act').

2. Since the issue involved in all these appeals are common and identical except variance of amount, therefore these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The grounds as well as facts narrated in ITA No.53/SRT/2023, for

assessment year 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3. The grounds of appeals raised by the assessee in “**lead**” case in ITA No.53/SRT/2023 are as follows:

“1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming Default Summary for Q1 of FY 2012-13 generated by TDS, CPC as per default summary details.

- interest on late payment of Rs.75,516/-

2. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the TDS, CPC for issuing default summary and raised demand.

3. On the facts and in the circumstances of the case as well as law on the subject, we seek the waiver of the said demand as generated by the TDS- CPC.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

4. Shri P.M.Jagasheth, Learned Counsel for the assessee, at the outset begins by pointing out that in case of all these thirteen appeals, the assessing officer levied the penalty under section 200A of the Income Tax Act and when the assessee carried the matter in appeal before Id CIT(A), the Ld. CIT(A) has not condoned the delay in filing these appeals. There are delay in filing these appeals before the Id CIT(A) which ranges from 316 days to 1216 days. Before, Id CIT(A), the assessee has appeared and filed written submission on merit and also requested the Id CIT(A) to condone the delay in filing these appeals. However, Ld. CIT(A) did not condone the delay in filing these appeals and dismissed all these appeals, therefore assessee is in further appeal before this Tribunal.

5. Shri Jagasheth, explained the Bench that there were sufficient cause and valid reasons to condone the delay, despite of this Id CIT(A) did not condone the delay. The Id Counsel has moved a petition requesting the Bench to condone the delay in all these appeals. A sample petition of assessee, for condonation of delay,

submitted by Id Counsel, which is applicable to all these appeals, are reproduced below:

“I, Vipul Suryakant Shah, Director of Airlink Communication Pvt. Ltd., Age 50 years Address at 1, 2, Annapurna Shopping Centre, 1st Floor, Adajan Patia, Surat-395009 do hereby solemnly affirm and declared as under.

The appeals filed before the Hon'ble CIT(A), NFAC, Delhi were not within time limit of 30 days from receiving of the demand notice, because our company was under financial crises and dispute between Directors. The directors were under financial stress and also disputes created between directors and also difficult to maintain the regular running expenses. Further, the delay was due to the government announced lockdown in March-2020 due to Covid-19 pandemic and due to this our company were under more financial problems. Hence, after relaxation of Covid-19 pandemic, we have immediately filed appeals before the Hon'ble CIT(A). Hence the necessary arrangement could not be made for filing of appeal before Hon'ble CIT(A),NFAC, Delhi in time.

In view of the above facts and circumstances, the appeals were submitted in delay before the Hon'ble CIT(A), NFAC, Delhi.

That the contents of above affidavit are true and correct to the best of my knowledge and belief.”

6. Apart from the above reasons for delay, as mentioned in the above affidavit, the Id Counsel stated that due to severe dispute in the Company's management, no any director of the company, took the responsibility to handle the taxation matters. A Private Limited Company is an artificial and judicial person, and it can work only when the Director work, that is, execution of work is done through Directors only. The Directors are kind of agents of the company and if they do not work, the various activities of the Company cannot be executed. Hence, if there is dispute in the Company's management, then in that situation, the company will suffer.

7. Shri Jagasheth, also submitted before the Bench a chart showing number of delay (in days), in filing these appeals before NFAC/Ld. CIT(A). The said chart is reproduced below:

AIRLINK COMMUNICATION PVT. LTD										
Sr. No.	F.Y	A.Y.	ITANo.	NOTICE OF DEMAND WAS SERVED ON	DUE DATE OF FILING APPEAL	APPEAL FILED BEFORE CIT(A) ON	NO. OF DAYS DELAY IN APPEAL BEFORE CIT(A)	OF	NO. OF DAYS DELAYIN APPEAL BEFORE THE CIT(A) EXCLUDING EXTENTION PERIOD FOR COVID-19 (EXT.PERIOD	DAYS FILING APPEAL BEFORE THE CIT(A) EXCLUDING EXTENTION PERIOD FOR COVID-19 (EXT.PERIOD

								STARTED FROM 15.03.2020)
1	12-13	13-14	53/SRT/2023	04.04.19	04.05.19	17.02.22	1020	316
2	12-13	13-14	54/SRT/2023	17.10.16	16.11.16	10.02.22	1913	1215
3	12-13	13-14	55/SRT/2023	16.10.16	15.11.16	10.02.22	1914	1216
4	12-13	13-14	56/SRT/2023	16.10.16	15.11.16	10.02.22	1914	1216
5	12-13	13-14	57/SRT/2023	04.04.19	04.05.19	17.02.22	1020	316
6	15-16	16-17	58/SRT/2023	24.11.16	24.12.16	17.02.22	1882	1177
7	15-16	16-17	59/SRT/2023	04.04.19	04.05.19	17.02.22	1020	316
8	15-16	16-17	60/SRT/2023	19.01.18	18.02.18	17.02.22	1461	756
9	15-16	16-17	61/SRT/2023	23.01.17	22.02.17	17.02.22	1822	1117
10	16-17	17-18	62/SRT/2023	02.01.18	01.02.18	17.02.22	1478	773
11	17-18	18-19	63/SRT/2023	04.04.19	04.05.19	17.02.22	1020	316
12	13-14	14-15	66/SRT/2023	19.01.18	18.02.18	17.02.22	1461	756
13	17-18	18-19	67/SRT/2023	04.04.19	04.05.19	17.02.22	1020	316

8. Shri Jagasheth, pleaded that due to Covid-19, the extension period started from 15.03.2020 (*suo-moto* condonation of delay by Hon`ble Supreme Court). The delay in filing of these appeals before NFAC/Ld. CIT(A), in the above chart, is after excluding the extension period, attributable to pandemic Covid-19, disease.

9. Shri Jagasheth, further submitted that due to financial crises in the assessee-company and due to dispute between directors of the assessee-company these appeals could not be filed on time before NFAC/Ld. CIT(A). The Ld. Counsel also stated that some delay in filing these appeals, is attributable to Covid-19 pandemic, which should be condoned in pursuance of the *suo motu* Writ Petition(C) No. 3 of 2020 dated 10.01.2022 of Hon'ble Apex Court. The Ld. Counsel further submitted that due to financial crises in the company, there was uncertainty in the management of the company and due to this uncertainty taxation matters of the company could not be handled properly by the Directors of assessee-company, and therefore such delay has occurred. Finally, Id Counsel prays the Bench that based on the above facts, the delay should be condoned, and direction may be given to the NFAC/Ld. CIT(A) to adjudicate the issue on merits.

10. On the other hand, Ld. Sr.DR for the Revenue argued that condonation is not a matter of right and there must be a reasonable cause for condoning such delay. The Ld.Sr-DR for the Revenue also pointed out that assessee has failed to give sufficient reasons to condone the delay in filing these appeals before

NFAC/Ld. CIT(A). The Ld. Sr-DR thus, contended that delay should not be condoned and all these thirteen appeals of assessee should be summarily dismissed.

11. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. We note that in India, Covid-19 period started from 15.03.2020 (vide *suo motu* Writ Petition of Hon'ble Supreme Court, Miscellaneous Application No.21 of 2022). It is clarified by the Hon'ble Apex Court that period from 15.03.2020 till 28.02.2022 shall be excluded in computing limitation period for instituting appeals. The findings of Hon'ble Apex Court in Miscellaneous Application No.21 of 2022 dated 10.01.2022 are reproduced below for ready reference:

“III In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

12. Therefore, by following the binding precedent of Hon'ble Supreme Court, in *suo-motu* Miscellaneous Application No.21 of 2022 (supra), we condone the delay in all these appeals which is attributable to Covid-19 pandemic /disease.

13. For remaining delay, which is not due to Covid-19 pandemic, we note that Ld Counsel has explained the delay with sufficient reasons. One of the reasons, the Ld Counsel stated that due to severe dispute in the Company's management, no any director of the company, took the responsibility to handle the taxation matters. A Private Limited Company is an artificial and judicial (legal) person, and does not have physical existence, and it can work only through the Directors, that is,

execution of work is done through Directors only. There was a severe dispute among the directors of the Company therefore no any Director took the responsibility to handle taxation (appeal) matters, hence delay has occurred. Another reason was that due to financial crises in the company, there was uncertainty in the management of the company and due to this uncertainty, the taxation matters of the company could not be handled properly. Third reason is that assessee company has participated in appellate proceedings and filed written submission on merit before the Id CIT(A) and requested Id CIT(A) to condone the delay. It means the assessee is active and willing to get adjudicated the issue involved in these appeals. During the appellate proceedings, in response to the notice, the assessee has filed the reply in the on-line portal of ITBA, which is also mentioned by the NFAC/Ld. CIT(A) in para-2 of its order, vide pages 2 & 3 of Id CIT(A)'s order. Therefore, we note that assessee has participated in the appellate proceedings. Hence, it cannot be said that assessee was negligent and did not participate in the appellate proceedings. These above facts clearly show that all the appeals filed by the assessee before Id CIT(A) are fit for condonation of delay.

14. We have also gone through the petition for condonation of delay filed by assessee and noted that reasons stated in the affidavit for condonation of such delay are convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing these appeals. We are of the view that looking into the sequence of events of the assessee, which are clearly demonstrating that assessee was pursuing the proceedings before Assessing Officer as well as NFAC/Ld. CIT(A) also. The fact that before NFAC/Ld. CIT(A), the assessee has participated and filed written submission, means there was no deliberate or negligent or *mala fide* behavior on the part of assessee.

15. We note that the power to condone the delay is discretionary and the discretion must be judicially exercised. If there is sufficient cause for not presenting these appeals within the limitation period, the delay should be condoned. We note that assessee has explained the sufficient cause. The words '**sufficient cause**' should receive a liberal construction so as to advance

substantial justice where no negligence nor inaction nor want of *bona fides* is imputable to the assessee. In deciding what is sufficient cause for delay in filing the appeal, the true guide is whether the assessee has acted with reasonable diligence in the prosecution of his appeal [*Brij Indar Singh v Kanshi Ram*, AIR 1917 PC 156; *Asi Bai v. Gomathi*, AIR 1979 Mad 115, 116]. In granting the indulgence and condoning the delay the appellate authority must be satisfied that there had been diligence on the part of the assessee and the assessee was not guilty of negligence whatsoever. In the instant case, we note that assessee was not guilty of negligence, hence delay should be condoned.

16. No doubt, the judicial precedents of the recent past show that the courts have adopted a liberal approach in entertaining the application for condonation of delay. However, while deciding the prayer for condonation of delay, the court cannot ignore or give a go-by to the basic principle that the burden to prove the existence of sufficient cause is always upon the assessee. We are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law & provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others , reported in 167 ITR 471, (1988 SC 897) (7) observes

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.”

17. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing these appeals. There was no deliberateness or negligence or mala fides on the part of the assessee. Therefore the delay in filing these appeals deserved to be condoned and the delay is condoned, in all these appeals.

18. Since we have condoned the delay in filing all these appeals before NFAC/Ld. CIT(A), therefore, we remit all these appeals back to the file of NFAC/Ld. CIT(A) to adjudicate various issues involved in these appeals on merit in accordance with law. The assessee is directed to file relevant documents and evidence before NFAC/Ld. CIT(A), on merits, as and when called for in support of its claim and participate in appellate proceedings efficiently. We direct the NFAC/Ld. CIT(A) to consider the written submission, documents, evidences filed by the assessee and adjudicate the issues involved in these various appeals on merit in accordance with law. Thus, for statistical purposes, all appeals are treated to be allowed.

19. Since we have adjudicated the issue involved by taking the “lead” case in ITA No.53/SRT/2023 for A.Y. 2013-14, and common and identical issues are involved in remaining appeals, therefore our instant adjudication shall apply *mutatis mutandis* to other appeals of the assessee also.

20. In the combined result, assessee’s thirteen (13) appeals are allowed for statistical purposes.

A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 21/04/2023 by placing the result on the Notice Board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat/दिनांक/ Date: 21/04/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// **True Copy** //

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

By Order

Senior Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat