

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI KULDIP SINGH, JM

ITA Nos. 841 to 845/Mum/2023
(Assessment Years: 2015-16 to 2019-20)

Zee Entertainment Enterprises
Limited
18th Floor, A Wing,
Marathon Futurex,
N M Joshi Marg, Lower Parel,
Mumbai-400 013

Vs.

Commissioner of Income Tax
(Appeals)-48,
Room No.1007, 10th Floor,
New CGO Bldg.,
Pratishta Bhavan,
M.K. Road,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAAC30243R

Assessee by : Shri Madhur Agarwal &
Shri Jay Bhansali, ARs
Revenue by : Shri Hiren M. Bhatt, DR

Date of hearing: 30.05.2023
Date of pronouncement : 30.05.2023

ORDER

PER BENCH:

01. These are the five appeals preferred by assessee against the appellate order passed by the Commissioner of Income-tax (Appeals)-48, Mumbai for A.Y. 2015-16 to A.Y. 2019-20 dated 21st February, 2023, wherein the learned CIT (A) as per paragraph no.7 of his appellate order did not condone the delay in filing of the appeal. The common ground of appeal raised by the assessee is as under:-

*"1. The Commissioner of Income Tax (Appeals)-48,
Mumbai (hereinafter referred to as "the CIT (A))*

erred in dismissing the appeal under section 248 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] filed by the assessee for refund of withholding taxes of Rs. 1.57,39,799/- borne by it on the grounds of delay without taking into account the reasonable cause for such delay. The reasons given for rejection of appeal are wrong, contrary to the facts of the case and against the provisions of the law.

2. The CIT(A) failed to appreciate that the discretion to condone delay in filing appeal under section 248 of the Act lies with him and that the CBDT circulars laying down guidelines for condoning delay in filing refund claims does not apply to such appeals. The CIT(A), having been shown reasonable cause, ought to have condoned the delay by taking a liberal view and entertained the appeal rather than favoring technicalities over substantial justice.

3. The CIT(A) erred in not allowing the refund of withholding tax of Rs 1,57,39,799/- borne and paid by the assessee on payments made in the nature of transponder fees to a non-resident although such transponder fees is not chargeable to tax in India.

4. The above grounds/sub-grounds are without prejudice to each other;

5. The appellant craves the leave to add, alter or amend all or any of the grounds of appeal."

02. Brief facts of the case shows that

- i. Assessee is a company engaged in the business of broadcasting and distributor of TV channels. It has entered into a lease agreement for the transponder facility with a tax resident of USA for transmission of programs.
- ii. Assessee has paid transponder fees to the tax resident of USA and deducted tax at source under Section 195 of the Income-tax Act, 1961 (the Act). Assessee has also deducted the tax for earlier years.
- iii. The co-ordinate Bench decision in assessee's own case for A.Y. 2013-14 in ITA No.4652/Mum/2016 dated 6th November, 2018 for A.Y. 2013-14 vide paragraph no.12 relying on the decision of Hon'ble Delhi High Court in case of DIT vs. Intelsat Corporation, in ITA No. 977/2011 dated 19th August, 2011, has held that no income is chargeable to tax in the hands of the recipient and no liability exists on the assessee to deduct tax at source under Section 195 of the Act.
- iv. Though this issue was decided for A.Y. 2013-14, but based on this judgment, the assessee was of the view that the tax deducted by the assessee is refundable to the assessee.

- v. Therefore, assessee on 28th March, 2019, made an application to the ITO (TDS)-4(3) (2), claiming refund of withholding tax.
- vi. On 7th May, 2019, the learned Assessing Officer neither rejected nor approved the application of the assessee and passed the following order sheet:-
- "Mr. Jay Bhansali, C.A. attended the hearing today and assessee's application was discussed. Assessee may explore option under Section 248 of the Income-tax Act, 1961 (the Act), 1961."*
- vii. Thereafter, assessee filed appeal before the learned CIT (A) under Section 284 of the Act.
- viii. Such appeals were filed on 15th May, 2019.
- ix. The learned CIT (A) was also presented with an application for condonation of delay in filing of this appeal.
- x. Assessee submitted that the order of the coordinate Bench for A.Y. 2013-14 was passed on 6th November, 2018. From this date the assessee became aware that on the impugned payment no tax is required to be deducted under Section 195 of the Act. Based on this, on 28th March, 2019, assessee filed an application before the learned Assessing Officer for

claiming the refund of tax deducted at source. On 7th May, 2019, without passing any order, learned Assessing Officer noted in the order sheet that assessee may explore option under Section 248 of the Act and thereafter, assessee filed an appeal before the learned CIT (A) on 15th May, 2019.

- xi. The condonation application stated that a liberal and pragmatic view may be taken and delay in filing of the appeal should be condoned.

03. The learned CIT (A) examined application for condonation of delay and held that

- i. ITAT order was available to the assessee on 6th November, 2018. This order was passed against the order passed under Section 201(1) of the Act for A.Y. 2013-14 and it does not have any relevance for these years in appeal.
- ii. Assessee has not explained as to why it took more than five months to make an application before the learned Assessing Officer. (ITAT order was passed on 6th November, 2018 and assessee approached to learned Assessing Officer on 28th March, 2019).
- iii. Time limit for filing of appeal under Section 248 of the Act is 30 days from the date of payment of tax under Section 195 of the Act.

- iv. Assessee has resorted to deliberate tactics to misguide and cover the delay of five months.
04. Accordingly, he dismissed the application for condonation of delay in filing of appeal. He also dismissed the appeal of the assessee stating that the circular dated 23rd October, 2007, clearly provide that the assessee should approach the respective authorities and not the learned CIT (A) and also stated that appellant is required to make an application before the CBDT as the refund exceeds ₹1 crore. Accordingly, he dismissed the appeal of the assessee for all these five assessment years. Therefore, assessee is in appeal before us.
05. We have heard the learned Authorised Representative and the learned Departmental Representative. The ground no. 1 and 2 are with respect to the rejection of condonation of delay application by the learned Commissioner of Income-tax (Appeals).
06. Before us, it was stated that on receipt of the order of the co-ordinate Bench for A.Y. 2013-14 on 6th November, 2018, the assessee preferred the application before the learned Assessing Officer on 28th March, 2019. On 7th May, 2019, the learned Assessing Officer passed an order sheet entry; wherein some reference was made to Provision of Section 248 of the Act and therefore, assessee was under bonafide belief that assessee is required to file appeal to CIT (A). Immediately thereafter, assessee preferred the appeal before the learned CIT (A) stating above facts requesting to condone the delay which was rejected. It

was submitted that assessee was under a bonafide belief that the refund would be processed and granted by the learned Assessing Officer. Thus, till that date Assessee did not file appeal. Only on the order sheet of the learned Assessing Officer Assessee became aware about filing of appeal under Section 248 of the Act before CIT (A). Thus, the learned CIT (A) should have condoned the delay in filing appeal and should have decided the issue on merits of the case.

07. The learned Departmental Representative vehemently supported the order of the learned CIT (A) stating that appeal is required to be filed within 30 days from the date of payment of taxes under Section 195. The delay could not be explained by assessee properly and hence the order of CIT (A) is sustainable.
08. On careful consideration of the facts, we find that in the present case on 7th May, 2019, the learned Assessing Officer made some order sheet entry with respect to appeal under Section 248 of the Act. The appeal is statutory right, cannot be conferred or taken away by any authority. Therefore, reference by the learned Assessing Officer does not take away statutory right of the assessee to file an appeal under Section 248 of the Act. The learned CIT (A) rejected application for condonation of delay merely for the reason that the delay for the date of passing of the order of the co-ordinate Bench and the date of application before the learned Assessing Officer of five months was not explained. We find that assessee has

started explaining the delay from the date of order sheet before the learned Assessing Officer dated 7th May, 2019. Thus, it is emerging from the order that assessee tried to explain the delay from date of the order of the Tribunal to the date of the order sheet entry by learned Assessing Officer. Appeal under Section 248 of the Act is required to be reckoned from the date of payment of tax under Section 195 of the Act. As per form no.35 filed before us, the date of payment of tax at column no.2 (b) is stated to be 30th April, 2015. The present appeals are filed on 15th May, 2019. Therefore, infact the delay is required to be reckoned from the date mentioned in column no.10 of form no.35. Therefore, assessee should have explained the reasons of delay starting from the date on which the tax is deducted and paid to the date of filing of the appeal. Application for condonation of delay should also have the explanation of delay from that date. Learned CIT (A) should also decide whether it is for sufficient cause or not.

09. We also clarify that nothing with respect to the admission or eligibility of appeal was argued before us by either side and we refrain to comment on those issues.
010. Accordingly, we direct the assessee to explain the delay starting from the date of payment of tax till the date of filing of the appeal. The learned CIT (A) may, after considering explanation of assessee and granting opportunity of hearing on application, may decide whether assessee has sufficient cause for delay in filing of these appeals. If he decides to condone the delay,



thereafter, he may decide the issue on merits of the case after giving assessee a proper opportunity of hearing.

011. In the result, all these five appeals are resorted to learned CIT (A).

012. The appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 30.05.2023.

Sd/-
(KULDIP SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 30.05. 2023

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai