

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.294 to 296/Kol/2023
Assessment Years: 2014-15 to 2016-17**

Ocean Marine Environment Coatings Pvt. Ltd. 19A, Nandanik Apartment, Flat No. 114, Deodar Street, Kolkata-700019. (PAN: AAGCM5600F)	Vs.	Income Tax Officer, TDS, Ward-2(2), Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Anil Kochar, Advocate
Respondent by : Shri Vijay Kumar, Addl. CIT, Sr. DR

Date of Hearing : 24.05.2023
Date of Pronouncement : 29.05.2023

ORDER

PER BENCH:

All these appeals filed by the assessee are against the separate orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order Nos. ITBA/NFAC/S/250/2022-23/1048000232(1), ITBA/NFAC/S/250/2022-23/1048000388 (1) and ITBA/NFAC/S/250/2022-23/1048000529 (1) dated 14.12.2022 (for AYs 2014-15 and 2015-16) and dated 12.05.2016 (for AY 2016-17) against the separate assessment orders passed by CPC (referred to as AO), u/s. 200A(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 16.03.2014, 28.01.2015 and 12.05.2016 for AYs 2014-15 to 2016-17 respectively.

2. Common issue of levy of fees u/s. 234E of the Act is involved in this set of three appeals. Also, a common ground has been raised against the order of Ld. CIT(A) not condoning the delay in filing all the appeals and thereby dismissing the appeals by rejecting the condonation application and not deciding it on merits.

2.1. Also, there is a delay of 47 days in filing all the three appeals before the Tribunal. Assessee has filed an affidavit dated 27.03.2023 deposed by Smt. Diya Basu, who is a Director of the assessee company. In this affidavit, explanation given is in respect of the delay which was caused in filing the appeal by the assessee before the Ld. CIT(A), in all the three appeals before us. In respect of delay in filing the appeals before the Tribunal, for the purpose of explanation, the only submission stated in the said affidavit is "*that appeal could not be filed in time before Hon'ble ITAT against the order dated 14.12.2022 since Vice President Sri Santanu Sanyal was sick and bedridden.*" We note that the impugned order of Ld. CIT(A) is dated 14.12.2022 (for AYs 2014-15 and 2015-16) and dated 12.05.2016 (for AY 2016-17) for which the date of service of the communication is stated in Form 36 is 14.12.2022. The explanation given by the assessee for this delay of 47 days is vague and general which does not reflect a responsible behaviour/conduct on the part of the assessee. It shows that the assessee is not diligent to comply with the requirements prescribed under the law.

2.2. The moot point before us in all the three appeals also relates to dismissal of appeals by Ld. CIT(A) by not condoning the delay in filing the appeals before him. There is a delay of 2123 days, 1805 days and 1335 days in respect of appeals for AYs 2014-15, 2015-16 and 2016-17, respectively, while filing the appeals before the Ld. CIT(A).

3. Brief facts of the case in this respect are that assessee had submitted statement for deduction of tax at source in Form 26Q for each of the three assessment years. Central Processing Centre (CPC), Bangalore processed the said statements and levied late filing fee u/s. 234E of Rs.54,303/- in AY 2014-15, Rs.1,12,393/- in AY 2015-16 and Rs.72,508/- in AY 2016-17. These TDS statements were processed vide order dated 16.03.2014 for AY 2014-15, 30.06.2015 for AY 2015-16 and 12.05.2016 for AY 2016-17. Assessee had filed the appeals before Ld. CIT(A) on 07.02.2020 for all the three years against the above stated orders passed by CPC. The appeals before the Ld. CIT(A) ought to have been filed on or before 16.04.2014 in terms of limitation prescribed u/s. 249(2) of the Act, which is 30 days. The only explanation given by the assessee before the Ld. CIT(A), in the petition for condonation of delay in filing the appeal before him is as under:

“The appellant was never served with any intimation or Demand Notice in respect of charging of late filing fee u/s. 234E. It is only while going through the default summary statement the appellant came to know about charging of late filing fee u/s. 234E. As such there is delay in submission of the appeal which may kindly be condoned in the peculiar facts and circumstances of the case.”

4. In this respect, Ld. CIT(A) observed that assessee has electronically filed the TDS statement. In the present digital and electronic regime of tax administration, filing as well as processing and the communication thereof are being done electronically, in digital form. The orders for processing of statements are served on the assessee electronically. Assessee is required to be diligent and access its registered e-mail to take note of any development in respect of its filings, which it has not done. It is important to note that assessee is a company, ought to have all the paraphernalia to manage and take appropriate actions as and when required.

4.1. There is an inordinate delay of the above stated days which is beyond the prescribed limit of 30 days u/s. 249(2) of the Act. We note that sub-section (3) of section 249 provides for condonation of delay if the Ld. CIT(A) is satisfied with the sufficient cause explained by the assessee in respect of the delay. The description available with Ld. CIT(A) for condonation of delay on the basis of sufficient cause has to be dealt with reference to sec. 5 of the Limitation Act, 1963. Various Hon'ble Courts have dealt with the words "sufficient cause" and have enunciated certain principles which are to be considered in respect of application for condonation of delay. These decisions provides that the word "sufficient cause" should receive a liberal construction so as to advance substantial justice when the delay is not on account of dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the assessee. Even while taking a reasonable, pragmatic, practical and liberal approach, it has been also stated in several decisions that such an approach must squarely fall within the concept of reasonable time and proper conduct of the party. We note that law of limitation is a substantive law which has a bearing on the right and obligation of the party and, therefore, the principle governing the law of limitation should be adhered to and applied appropriately depending on the facts and circumstances of a given case. The Hon'ble Courts have cautioned while dealing with this issue that where there exists inordinate delay and the same is attributable to the party's inaction and negligence, the courts have to take a strict approach so as to protect the substantial rights of the parties. Thus, in the case of condonation of delay where the appeal is filed beyond the limitation, the courts are empowered to condone the delay, provided appellant can prove his claim of inability to file appeal within the prescribed period. Litigant must be able to demonstrate that

there was “sufficient cause” which obstructed his action to file appeal within the prescribed time limit.

4.2. In the present case before us, the assessee has adduced an affidavit which is dated 27.03.2023, wherein the sufficiency of cause has been explained by submitting that one of the Vice President of the assessee, Shri Santanu Sanyal was entrusted with taking care of proper compliance and communication, who was negligent and could not meet the prescribed limitation. After filing the appeals before the Id. CIT(A), the order was passed ex parte u/s. 250 for which again it is stated in para 9 of the Affidavit that the Accountant of the assessee accessed the Income-tax Portal to find out the status of the appeals filed and came to know that the orders have been passed ex parte.

4.3. The contentions of the affidavit produced before us are extracted below which in no way demonstrates the sufficiency of cause for the delay in filing the appeal before the Ld. CIT(A). It does not reflect accountable and responsible behaviour/conduct on the part of the assessee who has now come up before the Tribunal with the prayer of remitting the matter back to the file of Ld. CIT(A) for fresh adjudication.

“1. That I am a Director of M/s Ocean Marine Environment Coatings P Ltd. As such, I am competent to swear this affidavit on behalf of the said .

2. That three appeals relating to TDS were filed on 07.02.2022 on behalf of the said company before the National Faceless Appeal Centre against the Assessment Order dated 16.03.2014, 28.01.2015 & 12.05.2016 for the AY 2014-15, 2015-16 & 2016-17 respectively.

3. That the said three appeals were dismissed by the National Faceless Appeal Centre by passing an ex-parte order due to delay in filing of appeal.

4. That Sri Santanu Sanyal, Vice-President, having his office at Karwar, Goa was entrusted with the instant TDS matter and I was under the bonafide belief that proper compliances/communications were being made from the end of Sri Santanu Sanyal, Vice – president.

5. That on or around 2nd February 2022, when the Accountant accessed Income Tax Portal in order to find the status of the TDS matters, it came to our knowledge

that above said three assessment orders had already been passed u/s 200A against the assessee-company by the CPC.

6. That, thereafter, the assessee contacted the said Vice-President to enquire about the reason for non-compliance of order u/s. 200A and non-filing of appeal at the relevant time and it came to the knowledge that due to total negligence on part of the Vice President appeal could not be done in time.

7. That then I approached to Sri Anil Kochar, Advocate, to take necessary steps in the matter and handed over all the relevant papers to him on 06.02.2022.

8. That the appeal was then prepared by him by 07.02.2022 after delay of 2123 days, 1805 days and 1335 days for the AY 2014-15, AY 2015-16 & A Y 2016-17 respectively.

9. That on or around 15th March 2023, when the Accountant of the assessee company accessed Income Tax Portal in order to find the status of the filed appeal, it came to our knowledge that an ex-parte order u/s 250 had already been passed against the assessee-company by the National Faceless Scheme Centre on 14.12.2022.

10. That, appeal could not be filed in time before Hon'ble ITAT against the order dated 14.12.2022 since Vice President Sri Santanu Sanyal was sick and bedridden.

11. That, I hereby give an undertaking that I shall make due compliance in case the above mentioned case is sent back to the file of the Ld. CIT(A).

12. That the facts stated in para 1 and 10 are true to the best of my knowledge and belief and paragraph no. 11 is an undertaking given by me."

5. There is no equity in tax matters and sufficiency of cause must outweigh so as to persuade us to exercise the discretion which is dependent upon the diligent and responsible conduct on the part of the assessee and furnishing of justifiable explanation for the delay caused. The appeals are in respect of late filing of fees which in turn have been rejected and dismissed by the Ld. CIT(A) on account of delay at the end of the assessee and then again before the Tribunal there is a prayer for condonation of delay of 47 days in filing these appeals. This factual matrix in no way persuade us to exercise the discretion as prayed by the assessee. From perusal of the order of ld. CIT(A), we observe that the issue of condonation of

delay has been elaborately dealt by him with the relevant discussion on various judgments of various Hon'ble Courts. In the present set of facts and circumstances as discussed above, we do not find any reason to interfere with the well reasoned finding given by the Ld. CIT(A). Accordingly, grounds taken by the assessee are dismissed. All the three appeals of the assessee are dismissed.

6. In the result, all the three appeals of the assessee are dismissed.

Order pronounced in the open Court on 29th May, 2023.

Sd/-
(Rajpal Yadav)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29th May, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent
 3. CIT(A), NFAC, Delhi
 4. CIT ,
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata