

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

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.304 to 310/Hyd/2023		
Assessment Years : 2009-10 to 2015-16		
SIBY Mining & Infrastructure (P) Ltd, Hyderabad PAN:AAECS9130L	Vs.	Income Tax Officer (TDS) Ward-2(2) Hyderabad
(Appellant) PAN:		(Respondent)
Assessee by: Shri C. Suresh, CA		
Revenue by: Shri Kumar Aditya, DR		
Date of hearing: 12/07/2023		
Date of pronouncement: 17/07/2023		

ORDER

Per Bench:

The above 7 appeals filed by the assessee are directed against the separate orders dated 3.4.2023 of the learned CIT (A)-12, Hyderabad relating to A.Ys. 2009-10 to 2015-16 respectively on the ground that the learned CIT (A) has refused to condone the delay in filing the appeals before him against the order passed by the Assessing Officer u/s 201(1A) of the I.T. Act. Since identical grounds have been raised by the assessee in these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. We take ITA No.304/Hyd/2023 for the A.Y 2009-10 as the lead case.

3. The learned AR drew the attention of the Bench to Para 3.1.6 of the order passed by the Assessing Officer on 31.3.2016 which is to the following effect:

3.1.6 The assessee's explanation has been gone through. It might be correct that interest portion is also paid directly from bank account. However, in the loan repayment schedule itself, the NBFCs quantify the principal and the interest portion as each EMI and hence the assessee is well aware of the interest component. Hence, as per the provisions of Section 194A, the assessee ought to have deducted tax from the interest payments to the NBFCs. When this is brought to the notice of the assessee, it is stated that though the TDS was not made from the interest payments by it, the recipients have admitted the same as their incomes and paid taxes thereon. It is further stated that the NBFCs have been requested to furnish the certificate under sec.26A and other details as per the provisions of section 201(1) of the I.T.ACT,1961. Stating as above, the assessee requested that as per the proviso to section 201(1), the company or the principal officer may not be treated as assessee in default under sec.201(1).

4. It was the contention of the learned AR that the finding recorded by the Assessing Officer was required to be rectified as payee had paid the taxes on the interest received by them therefore, the assessee has filed a rectification application u/s 154 within the statutory period before the Assessing Officer on 18.12.2017 which was to the following effect:

पावती सं/ASK No: 694030118013241
 दि/दि त/Date/A.Y: 03-01-2018/2010-11
 नाम / Name: SIBY MINING SERV
 अ.अ. / A.O: ITO - 2
 (2), TDS, HYDERABAD

Date: 18.12.2017

To,

The Income Tax Office (TDS)
 TDS Ward 2(2),
 Hyderabad

Dear Sir,

Sub: Siby Mining and Infrastructure Private Limited (TAN: HYDSO4182D), Assessment year 2010-11

Ref: Your order u/s 201(1) and 201(1A) of the Income Tax Act, 1961, dated 31-03-2016-
 Rectification Petition u/s 154 of the Act- Reg

The above referred Company – Assessee is in receipt of your Order passed u/s 201(1) and 201(1A) of the Income Tax Act, 1961.

In this regard Power of Attorney in favour of our Mr. C. Suresh, Chartered Accountant is enclosed herewith in **Annexure A**.

A perusal of the above referred Order shows the following two defaults:-

(a) Default u/s 201(1) - Rs.2,07,737:-

The above amount of Rs. 2,07,737 is attributable to the following Interest payments to Non Banking Financial Institutions which are covered u/s 194A of the Income Tax Act:-

S.No.	Name of the NBFC	Interest Paid
1	SREI Finance Ltd	9,22,011
2	Tata Motors Finance Limited	6,59,814
3	Tata Capital Ltd	73,412
4	GE Capital Financial Services Ltd	2949
5	Reliance Capital Ltd	3,21,972
6	Bajaj Finance Ltd	23,855

Contd..2

7	Kotak Mahindra Prime Ltd	73,859
TOTAL		20,77,372

The Assessee- Company has obtained the relevant Certificate in Form No.26A from the payees of interest in confirmation of the fact that the said payees have duly included the amount of interest in the Computation of their Total Income and have duly paid the tax on such Income declared in the Return of Income.

The relevant details as per the Form 26A furnished by the Payees are as under:-

Sl. No.	Name of the Payee	Amount of Interest as per order u/s 201	Amount of Interest as per Form 26A	Date of filing Return of Income by Payee	Amount of TDS at 10%	Copy of 26A enclosed in
1	SREI Finance Limited	9,22,011	7,96,950	20.07.2010	92,201	Annexure-B
2	Tata Motors Finance Limited	6,59,814	6,59,814	10.11.2010	65,981	Annexure-C
3	Tata Capital Limited	73,412	58,649	28.09.2010	7341	Annexure-D
4	Reliance Capital Limited	3,21,972	3,17,097	12.10.2010	32197	Annexure-E
5	Kotak Mahindra Prime Limited	73,359	79,158	-	7336	Annexure-F
Total		20,50568	19,11,668		2,05,056	

In respect of the above TDS amount, of Rs.2,05,056 the Assessee -Company is not to be treated as an Assessee-in-default since the payees have included the amount of Interest in their Returns of Income. In this context we invite your kind attention to the decision of the honourable Supreme Court in the case of **HINDUSTAN COCACOLA BEVERAGE PRIVATE LIMITED VS CIT 293 ITR 226** in which case the Honourable Apex Court has held that where the Recipient-Payee has included the amount of Income in its Return of Income and duly paid the taxes thereon, the Entity making payment or remittance shall not be called upon to pay up the TDS amount once again.

Copy of the Head Note in respect of the above referred Decision of the Hon'ble Supreme Court is enclosed herewith in Annexure"G".

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Consequent to the above decision of the Honourable Supreme Court Proviso has been inserted in Section 201(1) of the Act which reads as under :-

"[Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident-

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.]"

From the above it would be evident that all the five payees have furnished the relevant Certificates in Form 26A and therefore the Assessee -Company is not in default to the extent of the sum of Rs.2,05,056 and hence cannot be called upon to remit the said TDS amount of Rs. 2,05,056.

It is submitted that two Payees ie GE Capital Financial Services Ltd and Bajaj Finance Limited, inspite of our best efforts are not furnishing the relevant Certificates in Form 26A although one can fairly and reasonably presume that, being Corporate Entities of some standing, they would have definitely filed their Return of Income for assessment year 2010-11. Hence on the grounds of fairness, justice, equity and good conscience your Assessee should not be treated as an Assessee in default in respect of the two interest payments made to them.

a) Default in respect of Interest u/s 201(1A) – Rs.1,66,868

In this regard the proviso to Section 201(1A) is relevant and is reproduced as under :-

" [Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso to subsection (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.]"

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As per the above proviso the interest requires recalculation and the same may be done by way of Rectification u/s 154 of the Act.

We shall be glad to furnish any further clarifications your goodself may require with regard to the above submissions.

Kindly pass the necessary modification orders u/s 154 of the Act and oblige.

Thanking you,

Yours faithfully
For M/s. Sekhar and Suresh
Chartered Accountants


CA C Suresh
(Partner)

5. As the application u/s 154 of the Act was filed before the Assessing Officer for the reasons mentioned therein, the assessee presumed that the Assessing Officer has accepted the submission of the assessee after a period of six months, for that years, hence assessee has not preferred any appeal before the learned CIT (A). It was the contention of the assessee that when after a lapse of more than six years, the assessee had received recovery notice from the office of the Assessing Officer, the assessee preferred appeals before the learned CIT (A) and explained that as the application u/s 154 was not decided within six months and necessary evidence certifying deposit of tax on interest was filed before the Assessing Officer, therefore, the appeal was not preferred within time however, the learned CIT (A) had dismissed the appeals by observing as under:

During the course of appellate proceedings, the appellant submitted that subsequent to receiving the said assessment order passed u/s 201(1) of the Act on 31.03.2016, the appellant approached the said NBFCs (deductees) to whom the interest was paid in order to ascertain whether they had filed their return after taking into account the interest received from the appellant and paid taxes accordingly or not. The appellant obtained the relevant certificates in Form 26A duly certified by the Chartered Accountant from the NBFCs as per provisions of section 201(1) of the Act. Thereafter, the appellant submitted

Page 18 of 21

अपील संख्या/ Appeal No. 10016/2008-09 /CIT(A)-12 /Hyd

SIBY Mining and Infrastructure Pvt. Ltd.
PAN-AAECS9130L, AY-2009-10

the relevant certificates to the Assessing Officer vide letters dated 07.09.2016, 14.10.2016 and 25.10.2016 and requested to pass rectification order accordingly.

The appellant claimed that the rectification application u/s 154 is pending with the Assessing Officer as on date, but has not submitted any rectification request letter to substantiate its claim. However, considering the claim of the appellant to be true, then the inaction of the Assessing Officer on the application u/s. 154 of the Act led the appellant to file the present appeal against the assessment order.

In the instant case, the assessment order was passed on 31.03.2016 and due date for filing of appeal expired on 30.04.2016. The appellant filed the present appeal on 18.09.2022, thus with an inordinate delay of more than 6 years. The appellant stated that it had obtained the relevant certificates from deductees (NBFCs) as per provisions of section 201(1) of the Act and was hopeful of getting the assessment order rectified u/s. 154 of the Act.

Coming back to the merits of the delay in filing the appeal, it is seen that the appellant was hoping to get relief in the rectification order u/s 154 and had no intent to file an appeal against the present order.

Neither did the appellant, as on the date of the passing of the assessment order, had any factual grievance as such, as it could not produce the relevant certificates as per provisions of section 201(1) before the Assessing Officer and only non-consideration of rectification request u/s 154 of the Act is not a valid reason to file an appeal.

अपील संख्या/ Appeal No. 10016/2008-09 /CTT(A)-12 /Hyd

SIBY Mining and Infrastructure Pvt. Ltd.
PAN:AAECS9130L, AY-2009-10

Therefore, to cite reason for delay as expectation to get relief u/s 154 of the Act cannot become the cause of condonation of appeal as there was no locus standi or intent to file an appeal till the date of limitation of filing of appeal. Therefore, on the primary facts of the case, the appeal is dismissed *in limine* on the merits of the delay.

However, it is noted that the appellant had obtained relevant certificates from NBFCs as per the provisions of section 201(1) of the Act, which it claims has resulted in compliance of the provisions of section 201(1) of the Act later on. In this regard, as claimed by the appellant, a rectification request u/s 154 was also filed before the Assessing Officer, but the appellant has not submitted any evidence regarding filing of rectification request.

The Assessing Officer is duty bound to dispose the rectification request u/s 154 of the Act on the said issues, if filed by the appellant and give effect to the same as per law. It is a kind of inaction with regard to this effect that has led to the appellant to take recourse in filing of appeal and has further obliged the undersigned to adjudicate in the matter.

The Assessing Officer is directed to pass the rectification order u/s 154 of the Act, if any rectification request was filed by the appellant, by duly following the provisions of law. The appellant hopefully will not be required to take any recourse in the form of appeal or petition etc., with regard to the above observations as it is expected that the Assessing Officer would pass rectification order u/s 154 of the Act. However, the appellant is free to file an appeal against the disposed rectification order u/s 154 of the Act.

अपील संख्या/ Appeal No. 10016/2008-09 /CIT(A)-13 /Hyd

SIBY Mining and Infrastructure Pvt. Ltd.
PAN:AAECS9130L, AY-2009-10

Subject to the observations above, though the appeal is dismissed on account of delay, the Assessing Officer is directed to follow the observations made above in the matter.



To sum up, the appeal is **dismissed in limine**, on account of delay being not condoned.

6. It was submitted by the learned AR that the delay in filing the appeals were on account of the non-adjudication of the applications filed u/s 154 of the Act before the Assessing Officer and it was argued that the Assessing Officer should have adjudicated the applications within six months as per law u/s 154 of the I.T. Act. In view of the above, it was submitted by the learned AR that the delay in prosecuting the appeals before the learned CIT (A) may kindly be condoned and the learned CIT (A) may be directed to adjudicate the matter on merit.

7. Per contra, the learned DR had vehemently argued that the delay in filing the appeal before the learned CIT (A) should not be condoned and he relied upon the following decisions:

S.No.	Description	Filed Before/Citation
1.	Order of Hon'ble Supreme Court of India in the case of Majji Sannemma @ Sanyasirao Vs Reddy Sridevi & others	Civil Appeal No. 7696 of 2021 Dated: December 16, 2021
2	Order of Hon'ble Supreme Court of India in the case of Esha Bhattacharjee Vs Managing Committee of Raghunathpur Nafar Academy and others	Civil Appeal No's.8183-8184 of 2013 (Arising out of S.L.P © no's. 24868-24869 of 2011)
3.	Decision in the case of J.B Advani & Co. (P.) Ltd. Vs R.D. Shah, Commissioner of Income-tax, Supreme Court of India.	[1969] 72 ITR 395 (SC), Dated: August 22, 1968
4.	Decision in the case of Vama Apparels (India) (P.) Ltd. Vs Asst. Commissioner of Income-tax, Central Circle-42, High Court of Bombay.	[2019] 102 taxmann.com 398 (Bombay), Dated: January 11, 2019
5.	Hon'ble ITAT Order in the Case of M/s. Vishwabharati Mutually Aided Co-operative Credit Society Ltd., Vs. Income Tax Officer, Ward-4(3), Hyderabad in ITANo's: 360 to 364/Hyd/2022, A.Y's: 2010-11, 2011-12 and 2013-14 to 2015-16, Dated.13.02.2023	Now filed before the Hon'ble ITAT
6.	Section 253(5) of the I.T Act, 1961.	Now filed before the Hon'ble ITAT.

8. The learned DR more particularly drew the attention of the Bench to the order passed by the Tribunal in the case of Vishwabharati Mutually Aided Cooperative Credit Society Ltd vs. Income Tax Officer in ITA Nos 360 to 364/Hyd/2022 for the A.Ys 2010-11, 2011-12, and 2013-14 to 2015-16 dated 13.02.2023 wherein the Tribunal in Para 14 & 15 held as under:

“14. Further, the assessee's reasons in the condonation petition do not come under reasonable cause as prescribed under the Act, for condonation of delay and the explanation given by the assessee for delay is not proper and casual in nature. The reasons given by the assessee are devoid of any merit and not sustainable in the eyes of law. The law requires the assessee to be vigilant and careful in prosecuting its rights under the Act. Considering the totality of the facts and circumstances of the case and the conduct of the assessee, we do not find any reason to entertain the present appeal as the same is barred by limitation.

15. We also draw strength from the decision of Hon'ble Supreme Court in the case of Majji Sannemma @ Sanyasirao Vs. Reddy Sridevi and others (Civil Appeal No.7696 of 2021 dt.16.12.2021 relied upon by the ld.DR, wherein the Hon'ble Supreme Court dismissed the condonation petition. The facts of this case are identical to the facts of the present case. The Hon'ble Supreme Court at Para 6.2 had reproduced the facts of the case to the following effect :

"6.2 We have gone through the averments in the application for the condonation of delay. There is no sufficient explanation for the period from 15.03.2017 till the Second Appeal was preferred in the year 2021. In the application seeking condonation of delay it was stated that she is aged 45 years and was looking after the entire litigation and that she was suffering from health issues and she had fallen sick from 01.01.2017 to 15.03.2017 and she was advised to take bed rest for the said period. However, there is no explanation for the period after 15.03.2017. Thus, the period of delay from 15.03.2017 till the Second Appeal was filed in the year 2021 has not at all been explained. Therefore, the High Court has not exercised the discretion judiciously."

In our view, the facts of the present appeal are identical rather situated in a worse footing than that of the case of Majji Sannemma @ Sanyasirao (supra). Hence, the ld.CIT(A) was right in dismissing the condonation application and the appeal of the assessee. We do not find any reasons to interfere with the finding of ld.CIT(A) and accordingly, the appeal of assessee is dismissed. We have not discussed the other decisions cited by the ld.DR, mentioned hereinabove as the decision in the case of Majji Sannemma @ Sanyasirao (supra) was latest in time. Further, the decisions referred by the ld.AR were all prior to the decision in the case of Majji Sannemma @ Sanyasirao (supra) and are distinguishable on facts."

9. We have heard the rival contentions and perused the available material on record. There is no dispute that the order was passed by the Assessing Officer on 31.3.2016. Further, there is also

no dispute that the assessee had filed the application u/s 154 on 18.12.2017. The learned CIT (A) had duly recorded the above said findings in the impugned order for condonation of the delay in appeal. In our considered opinion the order passed by the Assessing Officer is the order which can be appealed before the learned CIT (A) in accordance with law. Similarly, the appeal lies against the order passed by the Assessing Officer u/s 154 of the Act. The assessee is a company cannot bury its head in sand for a period of six years and pipedream that the rectification application must have been decided in its favour. No documents have been shown to us demonstrating any inquiry or efforts were made by the assessee for seeking information about its application u/s 154 of the Act. The assessee has taken the things for granted and wrongly presumed that the application made by it must have been decided in favour of the assessee. In our view, the above said approach of a person like the assessee cannot be approved. The assessee should have been vigilant and take adequate steps to prosecute its applications. Further we are of the opinion that mere pendency of the application u/s 154 cannot be a ground to condone the delay in filing statutory appeals against the assessment order. Both the proceedings are independent and separate appeals lies against both the orders. In the light of the above, we do not find any error in the order passed by the learned CIT (A) whereby the learned CIT (A) refused to condone the delay. Accordingly, this part of the order whereby the learned CIT (A) has dismissed the application for condonation of delay is upheld.

10. However, in the later part of the order, the learned CIT (A) after holding the above, in para 7 (Supra) has noted the inaction of the Assessing Officer for not passing the order u/s 154 for a period

of six years. We also echo our concern to the lethargic, callous and highly deplorable conduct of the Assessing Officer. We depreciate the same. Since the learned CIT (A) has already issued direction to the Assessing Officer to dispose of the pending applications u/s 154 of the Act, we reiterate the same directions and direct the Assessing Officer to decide the 154 applications within a period of six months from the date of passing of this order by the learned CIT (A) i.e. w.e.f. 3.4.2023. A report of the passing of the order by the Assessing Officer be sent to the Tribunal. A copy of the above said order be also placed before the learned CIT (A) for ensuring that the Assessing Officer complies the order in time granted herein above.

11. In the result, appeals filed by the assessee are accordingly allowed for statistical purposes.

Order pronounced in the Open Court on 17th July, 2023.

Sd/- (R.K. PANDA) VICE-PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 17th July, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	SIBY Mining & Infrastructure (P) Ltd, Flat 104, Sri Sirisampada Hitech Apartments, Kavuri Hills, Madhapur, Hyderabad 500081
2	Income Tax Officer (TDS) Ward 2(2) Masab Tank Hyderabad 500004
3	Pr.CIT-4, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order