

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri M Balaganesh, Accountant Member**

ITA No. 2049/Del/2022  
(Assessment Year: 2011-12)

Jignesh Panchal, A-44, (Basement), Amar Colony Lajpat Nagar-4, New Delhi (Appellant) <b>PAN: AEMPP6645L</b>	Vs.	DCIT, Circle-1, Noida (Respondent)
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Assessee by :	Shri M. P. Rastogi, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	16/05/2023
Date of pronouncement	21/07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

**Application for condonation of delay dated 05.09.2022**

1. The Id counsel submitted that this appeal has been filed against the order of the Id CIT(A)/ National Faceless Appeal Centre (NFAC) dated 19.11.2021 on 29.08.2022 by the delay of 223 it is out of which the period from 20.11.2021 to 28.02.2022 falls within the period extended by Hon'ble Supreme Court due to Covid-19 pandemic. The Id counsel submitted that, therefore, the appeal should have filed by the assessee on or before 28.04.2022 and there is delay of 121 days not 223 days as reported by the registry of ITAT. The Id counsel further submitted that the impugned first appellate order dated 19.11.2021 was never served on the assessee till the date of filing of appeal before the Tribunal and when it came to knowledge of the assessee then the order was downloaded from the departmental portal of Income Tax on 17.08.2022 and appeal was filed on 29.08.2022. Thus, infact, there is no delay in filing appeal and even if it is presumed that there is some delay in filing appeal then

major part of time period falls within the limitation period extended by Hon'ble Supreme Court and remaining part of 121 days is as explained that the order of Id CIT(A) was never served on the assessee till the date of filing of appeal and the assessee could only get the copy of the order by downloading the same from the department portal.

2. The Id Sr. DR strongly opposed to the condonation of delay, however, he did not controvert that the Hon'ble Supreme Court by its order extended the limitation period up to 28.02.2022 and the period from 20.11.2021 to 28.02.2022 fall within the said extended limitation period. So far as the remaining part is concerned the assessee is claiming that he did not received copy of first appellate order form the department and when it came to his notice then he downloaded the same from the departmental portal on 17.08.2022 thereafter filed appeal on 29.08.2022 therefore, small delay in filing appeal due to sufficient cause may kindly condoned.

3. In view of the foregoing factual position, we are of the considered view that the almost  $\frac{1}{2}$  part of delay is covered by the order of Hon'ble Supreme Court and regarding remaining part of delay the explaining and cause shown that the assessee has bonafide and sufficient cause explaining the delay therefore, remaining part of delay in filing appeal is condoned. Accordingly, application of assessee is allowed and appeal is admitted for hearing and adjudication.

4. The sole controversy in this appeal is pertaining to the claim of the appellant in respect of TDS amounting to Rs. 24,75,000/- deducted by the employer M/s. Texl Exports Pvt. Ltd the Id counsel submitted that the AO ought not to have rejected the application u/s 154 of the Act thereby disregarding the claim of appellant in respect of TDS amount deducted by the employer M/s. Texl Exports Pvt. Ltd despite the fact that such employer and duly mentioned in TDS certificate of form No. 16 that there is mistake apparent from the record which could be rectified in the order u/s 154 of the Income Tax Act, 1961. The Id counsel vehemently pointed out that the Id CIT(A) has also erred in sustaining the liability against the

assessee, and not allowing the credit of TDS deducted by the employer despite the fact that the assessee furnish Form No. 16 as well as certificate of TDS before him. The Id counsel submitted that the assessee cannot be blamed on the omission and default of deductor employee on the ground that the TDS was deducted by the employer was not deposited by the deductee to the Govt account. The Id counsel placing reliance on the various judgments including judgment of jurisdictional Hon'ble Delhi High Court in the case of Sanjay Sudan Vs. ACIT reported as 452 ITR 107 (Del) to submit that the revenue cannot adjust withheld tax which has not been deposited by the deductor/ employer in Central Govt account, against refund due and payable to the assessee-employee. The Id counsel also placed reliance on section 205 of the Act as well CBDT Instruction No. 275/29/2014 dated 01.06.2015 and submitted that there is bar on direct demand qua the deductee assessee employee, same cannot be enforced coercively.

5. Replying to the above the Id Sr. DR placed reliance on the orders of the authorities below and submitted only submitting Form 16, TDS certificate is not sufficient when the revenue has not receiving TDS amount from the deductee therefore, the ground of assessee may kindly be dismissed.

6. On careful consideration of the above submission, at the very outset, we note that the identical facts and circumstances on identical issue was placed for adjudication before Hon'ble Hon'ble Delhi High Court in the case of Sanjay Sudan Vs. ACIT (supra) their lordship by referring section 205 of the Act and CBDT instruction dated 01.06.2015 (supra) held that the revenue cannot adjust withheld tax which has not been deposited by the deductor/ employer in the Central Govt account, against refund due and payable to the assessee-employee. In the present case also facts and circumstances are quite similar and identical therefore, respectfully following the proposition rendered by the Hon'ble jurisdictional High Court in the Case of Sanjay Sudan (supra) , the sole grievance/ ground of the assessee are allowed and AO is directed to allow

the claim of assessee in respect of TDS amounting to Rs. 2475000/- deducted by the employer M/s. Texel Export Pvt Ltd.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21/07/2023.

**-Sd/-**  
**(M Balaganesh)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 21/07/2023  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi