

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA Nos.904 & 905/PUN/2023
(A.Y. 2013-14)

And

ITA Nos.906 to 909/PUN/2023
(A.Y. 2014-15)

And

ITA Nos.910 to 912/PUN/2023
(A.Y. 2015-16)

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| M/s. Prabhakar Chandrakant Dharia, 1609, 3 rd Floor, Bhagehwar Niwas, Gopal Gayam Samaj Road, Sadashiv Peth, Pune-411030 PAN: AAXPD 8008 N | vs | DCIT, CPC. |
| Appellant | | Respondent |

| | | |
|-----------------------|---|-----------------------|
| Assessee by | : | None |
| Revenue by | : | Shri M.G. Jasnani, DR |
| Date of hearing | : | 12/09/2023 |
| Date of pronouncement | : | 12/09/2023 |

O R D E R

Per Bench:

These appeals preferred by the assessee emanate from the separate orders of National Faceless Appeal Centre [NFAC], Delhi, all dated 22.06.2023 for A.Y.2013-14 (ITA Nos.904 & 905/PUN/2023) for A.Y. 2014-15 (ITA Nos.906 to 909/PUN/2023) and for A.Y. 2015-16 (ITA Nos.910 to 912/PUN/2023) as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. The submissions of the Id.DR are recorded and the documents on record considered and all these matters were heard taking the lead case in ITA No. 904/PUN/2023 for A.Y. 2013-14 for illustration of facts in respect of adjudication of all these appeals.

3. It is observed that Form 26Q for Q2 of F.Y. 2012-13 was processed by ACIT, CPC, TDS on 08/01/2015 where interest u/sec. 234E of Rs. 1,15,500/- was levied for late filing of 26Q return for Q2. The assessee was required to file appeal against the order passed by the Assessing Officer (AO) u/sec. 200A within 30 days from the receipt of the assessment order. However, no appeal was filed by the assessee against the said order within the stipulated time. Later on, assessee filed rectification application u/sec. 154 before the AO on 10/11/2020 seeking rectification of the intimation issued earlier u/sec. 200A dated 08/01/2015 by DCIT, CPC, TDS, Gaziabad. The said rectification application was rejected by the AO vide order dated 12/11/2020 and the same was communicated to the assessee. Then, the assessee filed appeal against the said order of ACIT, CPC, TDS, Gaziabad dated 10/12/2020. The Id. CIT(A) had dismissed the said appeal vide order dated 11/10/2021 by holding as under:-

"For these reasons, the appeal sought to be instituted by the appellant in this case falls for two reasons, one that the impugned levy of late filing fee u/s.234E does not arise from the intimation u/s.154 dated 12.11.2020 against which appeal is filed but from the earlier intimation u/s.200A dated 08.01.2015, which was never challenged in appeal. Secondly,

without prejudice, even intimation u/s.200A dated 08.01.2015 issued by DCIT TDS CPC, Ghaziabad were to be treated as the intended order that was sought to be appealed against by the appellant u/s.249(2) in the interest of substantive justice, then also no "sufficient cause" has been shown u/s.249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s.249(2) of the Income Tax Act, 1961 r.w.s 5 of Limitation Act and even thereafter for over 2111 days of delay. Hence the appeal sought to be instituted belatedly against the levy of Late filing fee u/s.234E, by virtue of challenge to the intimation u/s.154 dated 12.11.2020 is hereby held as not admissible in law and on facts."

Now the assessee has again filed appeal u/sec. 246A against the order of AO passed u/sec. 200A dated 08/01/2015 after a delay of 2724 days before the NFAC. Thereafter, the NFAC has observed that the reason for delay in filing the appeal has been mentioned as the genuine belief of the assessee that the demand would be nullified at the AO level. The said explanation of the assessee did not find merit before the NFAC. Finally NFAC had dismissed the appeal of the assessee on the ground of delay. We are of the considered view that the issue pertains to levy of fees u/sec. 234E of the Act. It is settled principle of law that prior to 01/06/2015, the Department did not have power to impose such levy of late fee u/sec. 234E of the Act. In all these years, in appeals of the assessee, it has to be seen for which period the fee u/sec. 234E would be levied and for which period it would not be levied. The NFAC has not adjudicated the grounds of merit. That, from the record, we do not find any deliberate intention on the part of the assessee for delay in filing of appeal before NFAC and *bonafideness* is also not in doubt. Accordingly, we condone the delay in filing the appeal before the NFAC and set aside the order of

NFAC and remand the matter back to its file for adjudication as per law on merits. We order accordingly. The appeal of the assessee in ITA No.904/PUN/2023 is allowed for statistical purposes.

4. That, since the facts and circumstances and the issues involved in all these appeals are similar and identical, therefore, our decision already taken in ITA No.904/PUN/2023 shall apply *mutatis mutandis* to all other appeals of the assessee. In view thereof, the rest of the matters are also remanded to the file of the NFAC in accordance with the direction given in ITA No.904/PUN/2023 (supra).

5. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open Court on 12th September, 2023.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 12th September, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.