

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA Nos.531 to 533/Bang/2023, 554 to 567/Bang/2023 |
| Assessment Years : 2012-13 to 2014-15 |

| | | |
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| M/s. Prakat Solutions Pvt. Ltd., 147, Rainbow Residency, Off. Sarjapura Road, Junnasandra Village, Carmelaram, Bengaluru – 560 035. PAN : AAFCP 3783 R | Vs. | DCIT, Circle – 3(1)(1), Bengaluru. |
| APPELLANT | | RESPONDENT |

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|-------------|---|---|
| Assessee by | : | Shri. Ramakrishna Kamat, CA |
| Revenue by | : | Shri. Subramanian S, Addl. CIT (DR), ITAT, Bengaluru. |

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| Date of hearing | : | 27.09.2023 |
| Date of Pronouncement | : | 27.09.2023 |

ORDER

Per Bench:

These appeals at the instance of the assessee are directed against seventeen Orders of CIT(A) (all orders of the CIT(A) are dated 25.05.2023), passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Years are 2012-13, 2013-14 and 2014-15.

2. Common issues are raised in these appeals; hence, they were heard together and are being disposed off by this consolidated order. Grounds raised for ITA No.531/Bang/2023 for Assessment Year 2012-13 read as follows:

1. *The learned Commissioner of Income Tax(Appeals) erred in holding there was deliberate inaction on the part of the appellant which resulted in delay in filing of the appeal since no motive can be attributed for any such deliberate inaction.*
2. *The learned Commissioner of Income Tax(Appeals) failed to consider the fact that the jurisdictional High Court of Karnataka has in the case of FatherajSinghvi v. Union of India [2016] 73 taxmann.com 252 (Kar.).held that the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent authority for intimation for payment of fee under Section 234E can be said as without any authority of law.*
3. *The appellant relies on the judgment of Hon'ble Supreme Court in case of Collector Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072/167 ITR 471 wherein it was held that a lenient view on the matter of condonation of delay should be taken provided the explanation and reasons for delay is bona fide and not merely a device to cover an ulterior purpose or an attempt to save limitation in an underhand way. **Whenever substantial justice and technical considerations are opposed to each other, cause of substantial justice has to be preferred.** **And** hence the learned Commissioner of Income Tax (Appeals) erred in not condoning the delay in filing of the appeal.*
4. *Reliance is also placed on the following orders of ITAT, Bangalore*
Kooud Software Pvt. Ltd. V The Dy. Director of Income-tax, CPC - TDS, Ghaziabad - ITA No.82 to 90/Bang/2022

*Nagesh Consultants Vs. DCIT CPC-TDS Circle - 2(1.), Bangalore
ITA No. 32/Bang/2023 dtd: 07-03-2023*

*Thomas Abraham Vs. ITO (TDS) Circle - 1(3)(3) Bangalore, ITA No.
387 to 390/Bang/2022*

*Balaram Corporate Servies Pvt Ltd V. The Income Tax Officer (TDS),
Ward - 1(1), Bengaluru. ITA Nos.348 to 350/Bang/2023*

5. *The appellant craves the leave to add, amend, alter and/ or withdraw any ground/s before or during the hearing.*
6. *For these and such other grounds that may be urged at the time of hearing the appellant prays that the appeal may be allowed.*
3. Brief facts of the case are as follows:

Assessee is a private limited company engaged in the business of software testing services. For the various quarters relating to Assessment Years 2012-13 to 2014-15, assessee filed statements of tax deducted at source (TDS) in Form Nos.24Q and 26Q belatedly. The AO issued intimation under section 200A of the Act levying late fees under section 234E of the Act. The relevant Financial Years, the date of orders, the amount of late fee charged under section 234E of the Act, etc., are detailed below:

| | FY | Form Qtr | Date of order | order sec | 234E |
|--------------|---------|----------|---------------|-----------|-----------------|
| 1 | 2012-13 | 24Q Q2 | 07-Mar-18 | 154 | 56,400 |
| 2 | 2012-13 | 26Q Q2 | 03-Oct-16 | 200A | 55,600 |
| 3 | 2012-13 | 24Q Q3 | 07-Mar-18 | 154 | 38,000 |
| 4 | 2012-13 | 26Q 03 | 03-Oct-16 | 200A | 37,200 |
| 5 | 2012-13 | 24Q 04 | 07-Mar-18 | 154 | 14,000 |
| 6 | 2012-13 | 26Q 04 | 04-Oct-16 | 200A | 13,200 |
| | | | | | |
| 7 | 2013-14 | 24Q 01 | 05-Dec-16 | 200A | 72,200 |
| 8 | 2013-14 | 26Q 01 | 27-Nov-16 | 200A | 43,965 |
| 9 | 2013-14 | 24Q 02 | 15-Jul-14 | 200A | 53,800 |
| 10 | 2013-14 | 26Q Q2 | 05-Dec-16 | 200A | 33,460 |
| 11 | 2013-14 | 24Q Q3 | 05-Dec-16 | 200A | 35,400 |
| 12 | 2013-14 | 26Q Q3 | 05-Dec-16 | 200A | 35,400 |
| 13 | 2013-14 | 24Q 04 | 05-Dec-16 | 200A | 11,400 |
| 14 | 2013-14 | 26Q Q4 | 05-Dec-16 | 200A | 11,400 |
| Total | | | | | 5,11,425 |

4. Aggrieved by the levy of late fees under section 234E, assessee filed appeal before the First Appellate Authority (FAA). The appeals were filed before the FAA belatedly. The CIT(A) refused to condone the delay in filing the appeals and dismissed all the appeals. The CIT(A) was of the view that there is a difference between the marginal delay and inordinate delay and referred to various judicial pronouncements in support of his view that the delay cannot be condoned.

5. Aggrieved by the orders passed by the CIT(A), assessee has filed the present appeals before the Tribunal. The learned AR has filed copy of the application for condonation of the delay before the CIT(A). The learned AR submitted that on identical facts, the Bangalore Bench of the Tribunal, in the following orders had condoned the delay and restored the matter to the CIT(A) to decide the issue on merits:

- Solaron Sustainability Services Pvt. Ltd., Vs. ACIT, CPC – TDS in ITA Nos.385 to 390/Bang/2019
- Atlas Brands (P) Ltd., Vs. CIT (TDS) (2022) 137 taxmann.com 191 (Karnataka)
- Anumod Viswambharan Vs. ITO TDS [2023] 152 taxmann.com 384 (Cochin Trib.)

6. We have heard the rival submissions and perused the material on record. It is not in dispute that if the ratio laid down by the Hon'ble jurisdictional High Court in the case of FatherajSinghvi Vs. UoI, reported in [2016] 73 taxmann.com 252 is applied, then the levy of late fees under section 234E of the Act would be illegal for the return of TDS in respect of the period prior to 01.06.2015. The present appeals of the assessee relate to TDS returns filed prior to 01.06.2015. On identical facts, the Bangalore Bench of the Tribunal in the case of Solaron

Sustainability Services Pvt. Ltd., Vs. ACIT (supra) had condoned the delay of filing the appeal belatedly before the CIT(A) and restored the issue to the files of the CIT(A) to decide the cases on merits. The relevant finding of the Bangalore Bench of the Tribunal in the case of Solaron Sustainability Services Pvt. Ltd., Vs. ACIT (supra) reads as follows:

“10. We have considered the submissions of the learned DR and also the grounds of appeal filed by the Assessee. It is not in dispute that if the ratio laid down by the Hon’ble Karnataka High Court in the case of Fateeraj Singhvi (supra) is applied then the levy of interest u/s.234-E of the Act would be illegal for returns of TDS in respect of the period prior to 1.6.2015. The present appeals of the Assessee relate to TDS returns filed prior to 1.6.2015. The decision of the Hon’ble Karnataka High Court in the case of Fateeraj Singhvi (supra) was rendered on 26.8.2016. It has been held by the ITAT Hyderabad Bench in the case of MSV IT Solutions Ltd. Vs. ITO, Ward 16(4) ITA Nos. 177 & 178/Hyd/2018 order dated 26.10.2018 wherein on identical facts noticing that there was no legal remedy prior to 1.6.2015 against an intimation u/s.200A of the Act, the Hyderabad Bench condoned delay in filing appeal before CIT(A). The Assessee is not guilty of negligence and the delay was due to bonafide reasons set out above. The Assessee and as per the ratio laid down by the Hon’ble Supreme Court in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC) delay should be condoned where there is no negligence. The Hon’ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day’s delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. The ITAT Hyderabad Bench in the case of MSV IT Solutions Ltd. Vs. ITO, Ward 16(4) ITA Nos. 177 & 178/Hyd/2018 order dated 26.10.2018 wherein on identical facts noticing that there was no legal remedy prior to 1.6.2015 against an intimation u/s.200A of the Act, the Hyderabad Bench condoned delay in filing appeal before CIT(A).

11. Considering the reasons given by the Assessee for condonation of delay and keeping in mind that technicalities should not stand in the way of rendering substantive justice, we are of the view that the delay in filing the appeals deserves to be condoned. Accordingly the delay is condoned. Since the CIT(A) has not decided the issue on merits, the order of the

CIT(A) is set aside and remanded to the CIT(A) with a direction to decide the appeals of the Assessee on merits in accordance with law with due opportunity to the Assessee of being heard.

12. In the result, all the appeals by the assessee are treated as allowed for statistical purpose.”

7. Similar view has been held by the Bangalore Bench of the Tribunal in the case of Atlas Brands (P) Ltd., Vs. CIT (TDS) and Anumod Viswambharan Vs. ITO TDS (supra). Since the facts of the present case are identical to the facts considered by the Tribunal in the aforesaid orders of the Bangalore Bench of the Tribunal, we condone the delay of filing the appeals before the CIT(A). Since the issue on merits has not been decided by the CIT(A), we restore the matter to the files of the CIT(A) to adjudicate them on merits. It is ordered accordingly.

8. In the result appeals filed by the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(LAXMI PRASAD SAHU)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 27.09.2023.

/NS/*

Copy to:

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|-------------------------|---------------|
| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.