

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 258/JPR/2020
निर्धारण वर्ष/Assessment Years : 2016-17

AVVNL AEN CSD-II Sikar 220KV GSS Sabalpura, Fatehpur Road, Sikar	बनाम Vs.	DCIT, CPC (TDS), Ghaziabad
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AACCA 8562 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : None
राजस्व की ओरसे / Revenue by: Sh. Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 07/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 13/12/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Jaipur [herein after referred to as "NFAC/ld. CIT(A)"] dated 19.08.2019 for the assessment year 2015-16 (Qtr. 1).

2. The assessee has raised the following grounds of appeal:-

“In the facts & circumstances of the case the Ld. CIT Appeals, Ajmer has erred in not admitting the appeal for LATE FEES imposed u/s 234E Under clause of sub section 1 of 200A.

1. The assessee has Filed an appeal with Ld CIT (appeals) JAIPUR which was technically delayed. The delay in filing the appeal was due to the fact non/delay service of order and thereafter incumbent officer got transferred and we did not find any notice or not about relating to the said matter hence being unaware of the fact. hence the appeal was delayed. After ITO demand notice the applicant checked income tax site and then filed the appeal. hence filing of the appeal was delayed. Also as required by you Appeal to file online necessary approvals to be taken, and OTP is received late hence filing of Appeal was delayed.

2. The Ld CIT (appeals) has erred in dismissing Appeal as not admitted the appeal on self interpretation He has not rely on our written submission,rcircular and Also NSDL made Mandatory in TDS return emai.

3. The Ld CIT (appeals) has erred in dismissing Appeal as not admitted without considering the case on merits. Refusing to condone delay has result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.

4. The Tax was deducted & Deposited in time, the only default is delay in filing of the return, the alleged delay in filing the TDS statement has not resulted in any loss of revenue to the department and, therefore, the default, if any, was purely venial breach. The assessee was being GOVT. COMPANY working in public interest and intention of not filing the TDS return at source within time. there was no mala fide

5. As per provision of Sec. 234 E late fee cannot be recovered for TDS statements which were due for F.Y 2011-12 as well on TDS statements late fee cannot be recovered for FY 12-13 if not collected at the time of delivering TDS statements to the depts. Provision of Sec. 234 E has been made applicant with effect from 1 july 2012. It states that "Amount of late fee shall be paid before delivering a TDS statement". It means that any late fee should have fee deposited just at the time of delivering TDS statements & not later than this. The authorized TIN-NSDL centre which accepted the TDS statements also accepted there without late fee, as well as the software utility of the TDS depts. It self accepted these without late fee. there was no enabling provision in Section 200A of the Act for making adjustment in respect of the statement filed by the assessee with regard to tax deducted at source by levying fee under Section234E of the Act

6. In the facts & circumstances of the case the learned A.O. erred in imposing late fee without appreciating the facts & circumstances of the case and hence the same should be deleted.

7. *That the order is bad in law.*

8. *The appellant craves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal with the prior permission of the chair."*

3. None appeared on behalf of the assessee, brief facts of the case are that the assessee was aggrieved by the levy of fees u/s 234E of the Act for an amount of Rs. 24,000/-. Against the said levy the assessee filed an appeal before the ld. CIT(A) who dismissed the appeal of the assessee observing as under:-

"3. I have carefully considered the reason given for condonation of delay. I find that the reason given by the appellant is baseless and without any supporting evidences. The case law cited by the appellant are not applicable in this case because in this case the appellant twist the facts mentioning the wrong date of service of demand notice and date of order. Therefore, I am the view that the appellant is not file the appeal within time without any genuine cause. Hence, I reject the condonation delay of 803 days and appeal is dismissed at the admission stage."

4. Aggrieved from the above order of the ld. CIT(A) not condoning the delay of 803 days, the assessee preferred an appeal on various grounds has reiterated in para 2 above. From the various grounds and evidences placed on record, the bench found merit in the prayer of the assessee that the there was a delay in service of order and thereafter in-charge Officer got transferred and there was mis-communication on this account. Even the pre-requisite filing of appeal online and the related OTPs were also not generated. All these aspects has resulted a delay

and these were genuine reason for the delay in filing an appeal before the Id. CIT(A) which he could not considered and dismissed the appeal without considering the merits of the case.

5. On the other hand, the Id. DR relied upon the order of lower authorities and submitted that the assessee being the state of electricity company and deputed consultant to comply the procedural aspect of the matter. Thus, he supported the order of the Id. CIT(A) and submitted that Id. CIT(A) has rightly dismissed the appeal of the assessee.

6. We have heard Id. DR and perused the material placed on record. We feel that the assessee has sufficiently explained the reasons for delay. The assessee being state run company has no benefit derived in bring this appeal late and in fact was at risk. As it is evident from the record that service of order and thereafter in-charge officer got transferred and there was mis-communication on this account. Even the pre-requisite filing of appeal online and the related OTPs were also not generated. All these aspects has resulted a delay and these were genuine reason for the delay in filing an appeal before the Id. CIT(A) which he could not considered and dismissed the appeal without considering the merits of the case. Considering all the aspect of the matter the bench found merit in the prayer of the assessee. Therefore, considering overall the facts and merits of the case and

considering the decision of the Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause and therefore, we admit this appeal though delay of 803 days in filing the appeal and direct the ld. CIT(A) to decide the issue on the merits of the case of the assessee.

In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13/12/2023.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/12/2023

*Ganesh Kumar, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- AVVNL AEN CSD-II, Sikar
2. प्रत्यर्थी / The Respondent- DCIT, CPC (TDS), Ghaziabad
3. आयकर आयुक्त / The ld CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 258/JPR/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar