



(Through Virtual hearing from ITAT, Pune)

BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

Sr	Appeal No	Appellant		Respondent	Assessment Year
1	ITA No 003/NAG/2023	Bank of India, Branch : Itwari, Nagpur	TAN :NGPB01654C	Joint Commissioner of Income Tax-(TDS), Range-1 Nagpur	2010-11
2	ITA No 004/NAG/2023	Bank of India, Branch : Dharampeth, Nagpur	TAN :NGPB01586E		2010-11
3	ITA No 005/NAG/2023	Bank of India, Branch : Reshimbaug, Nagpur	TAN :NGPB01703C		2010-11
4	ITA No 006/NAG/2023	Bank of India, Branch : Dongargaon, Nagpur	TAN :NGPB02965E		2010-11
5	ITA No 007/NAG/2023	Bank of India, Branch : Dongargaon, Nagpur	TAN :NGPB02965E		2011-12
6	ITA No 008/NAG/2023	Bank of India, Branch : Butibori, Nagpur	TAN :NGPB01715A		2010-11

**द्वारा / Appearances**

Assessee by : Mr Pratik Sadrani ['Ld. AR']

Revenue by : Mr Abhay Marathe ['Ld. DR']

Date of conclusive Hearing : 22/03/2024

Date of Pronouncement : 22/03/2024

**आदेश / ORDER**

**PER G. D. PADMAHSHALI, AM;**

This bunch of six appeals of the assessee instituted u/s 253(1)(a) of the Income-tax Act, 1961 ['the Act' hereinafter] challenging respective orders of National Faceless Appellate Centre ['NFAC' hereinafter] passed u/s 250 of the Act dismissing the respective appeals assailed against levy of penalty u/s 271C of the Act, on the ground of limitation.



2. Since the facts and solitary issue involved in these six appeals are identical, on the request of rival parties, and for the sake of brevity these are heard together for a common and consolidated order.

3. **Briefly stated common facts of this bunch of cases are;**

3.1 The assessee is a branch of Public Sector Banking Company viz; Bank of India owned by Central Government of India, in whose case an order u/s 201(1) & 201(1A) of the Act was passed by the Ld. ITO-TDS thereby raising a demand on account of failure to deduct tax at source ['TDS' hereinafter] u/s 194A of the Act from various amounts of interest paid/credited to various parties/customers on bank deposits etc.

3.2 On a reference from Ld. ITO-TDS about the assessee's failure to deduct TDS u/s 194A of the Act, the jurisdictional Ld. JCIT initiated the penalty proceedings and after considering the submission of the appellant, has culminated the proceedings by imposing penalty u/s 271C of the Act equal to 100% of TDS sought to be deducted from the interest etc., paid/credited to various parties/customers etc.

3.3 Aggrieved by the penalty orders, the assessee instituted separate appeals before Ld. NFAC u/s 246A(1)(c) of the Act. Without going into merits of case, in the absence of evidence justifying/explaining inordinate delay in filing these appeals, the Ld. NFAC placing reliance on catena of judicial precedents came to dismissed these appeals *in limine* on a technical ground of limitation.



3.4 Aggrieved by the orders of Ld. NFAC, the assessee came in the present appeals seeking reversal of dismissal of respective impugned orders.

4. During the course of virtual hearing, Ld. AR at the outset submitted that, the Co-ordinate bench vide its orders in ITA No. 337/NAG/2022 dt. 23/08/2023 and ITA No. 153/NAG/2022 dt. 09/06/2022 adjudicated the quantum issue in favour of assessee holding that, order passed by Ld. ITO-TDS u/s 201(1) r.w.s. 201(1A) of the Act is barred by limitation. In the event following '*foundation-superstructure theory*' the consequential orders passed levying penalty has no legs to stand now. *Per contra*, the Ld. Mr Marathe solidifying the facts submitted that, since impugned orders did not pass through its merits, therefore the contentions of appellant is pointless here. It is argued that, there was inordinate delay in filing appeals against the imposition of penalty u/s 271C of the Act before Ld. NFAC and appellant did fail to establish any reasonable cause beyond such unreasonable delay. Moreover, the appellant has merely filed these appeals without any petition for condonation and affidavit sufficiently explaining reasonable cause, in the event the Ld. NFAC dismissed them which cannot be faulted with now merely on the basis of quantum adjudication. Therefore, this bunch of six appeals of the appellant deserves no relief in the present adjudication.

5. We have heard rival parties' submissions and perused the material placed on record in light of rule 18 of ITAT-Rules. At the outset we note that, against



the imposition of penalty u/s 271C of the Act, the appellant admittedly instituted appeals with substantial delay in each case which is tabulated herein below for ready reference and better understanding;

Sr	Appeal No	Assessment Year		Date of Institution of appeal before Ld. NFAC	No of days delayed
1	ITA No 003/NAG/2023	2010-11	16/01/2018	09/01/2021	1056
2	ITA No 004/NAG/2023	2010-11	26/10/2017	09/01/2021	1136
3	ITA No 005/NAG/2023	2010-11	17/01/2018	09/01/2021	1053
4	ITA No 006/NAG/2023	2010-11	27/09/2017	09/01/2021	1164
5	ITA No 007/NAG/2023	2011-12	26/12/2018	11/10/2019	256
6	ITA No 008/NAG/2023	2010-11	17/01/2018	09/01/2021	1053

6. As can be noted from above tabulation that, these appeals were filed with inordinate delays and admittedly without accompanying therewith petition for condonation of delay stating therein circumstance owing to which the delays occurred/caused. It is also on record that, the appellant having filed these appeals did fail to showcase to the satisfaction of appellate authority that there were reasonable cause beyond such inordinate delays so as to entitle to exoneration from penalty by virtue of section 273B of the Act. In the event the Ld. NFAC was constrained to dismiss the appeals *in limine* on technical grounds of limitation without touching or adjudicating merits thereof.

7. We however note that, while dismissing these appeals *in limine* on the grounds of limitation, the Ld. NFAC disregarded the fact that substantial part



of the delay in instituting the appeals [i.e. period from 15.03.2020 till 28.02.2022] stand excluded for the purposes of limitation by the Hon'ble Apex Court vide its judgement in MA-21-&-29/2022 dt. 10/01/2022. But it is also on records that only balance delay remained unexplained by the appellant.

8. In our considered view, non-filing of petition for condonation and explaining reasons of delay sufficiently is a technical but curable defect. Therefore, these defects by no means can solitarily capable of depriving the appellant from seeking adjudication on merits, unless such delay appearing to be deliberate. On the other hand, perusal of records in no manner is capable of suggesting us that the delay in filing the appeals before the Ld. NFAC by the appellant bank/branch was deliberate. Therefore, this technical reason should not take away the right of appellant to contest its cases on merits. In '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported at 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), their Hon'ble Lordship have categorically held that, 'no one should be deprived of an adjudication on merits unless is found that the litigant deliberately delayed the filing of appeal.' On the other hand, the Revenue did not bring anything to suggest that the delays in filing these appeals were thoughtful.

9. Further placing reliance on recent judgement of Hon'ble Supreme Court rendered in '*Raheem Shah & ANR Vs Govind Singh & Ors*' [CIVIL APPEAL



NO. 4628 OF 2023], we are heedful to state that, dismissal of appeals on technical ground of limitation were unwarranted in these cases because while dealing with tax litigation, in the words of Hon'ble Lordships, the appellate authorities under the Act are a quasi-judicial authority and they are expected to adopt justice oriented approach rather resorting to iron-cast technical one.

10. In view of aforesaid discussion, without offering any comments on merits of the case, in the larger interest of justice we deem it fit to set-aside these impugned orders and remit them back to the Ld. NFAC with a direction to deal therewith *de-nova* in accordance with law after considering the orders of Co-ordinate bench in appellant's own pressed into service to which it had no benefit of consideration and pass a speaking order in terms of section 250(6) of the Act. *Ergo* ordered accordingly leaving all rights and liabilities of rival parties open.

**11. In result, these six appeals are allowed for statistical purposes.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday, 22<sup>nd</sup> day of March, 2024.

**-S/d-**

**S. S. GODARA**  
**JUDICIAL MEMBER**

पुणे / PUNE ; दिनांक / Dated : 22<sup>nd</sup> day of March, 2024.

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.  
4. The NFAC Delhi

2. प्रत्यर्थी / The Respondent.  
5. DR, ITAT, Nagpur Bench, Nagpur

3. The Pr.CIT Concerned.

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order  
वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.

**-S/d-**

**G. D. PADMAHALI**  
**ACCOUNTANT MEMBER**