

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA No. 286/Nag./2023
(Assessment Year : 2013-14)

Sunilkumar Rajendra Rai
1, Sanjeevani Complex, 112, Pande Layout,
Khamla, Nagpur
PAN – ADQPR7554R

..... Appellant

v/s

TDS Ward,
Nagpur.

..... Respondent

Assessee by : None

Revenue by : Shri Abhay Y.Marathe, Sr.Dr.

Date of Hearing – 16/07/2024

Date of Order – 16/07/2024

ORDER

PER K.M.ROY, A.M.

The present appeal has been preferred by the assessee challenging the impugned order dated 03/08/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), [*"learned CIT"*], for the assessment year 2013-14.

2. The assessee has raised following grounds of appeal:–

<i>Grounds of Appeal</i>	<i>Tax</i>	<i>Effect</i>
1. <i>The learned CIT(A) erred in condoning the delay in filing the appeal.</i>		0
2. <i>The order passed u/s 200 r.w.s. 234E of I.T. Act 1961 imposing penalty u/s 234E of I.T. Act 1961 is illegal, invalid and bad in law</i>	39,200	
3. <i>The learned CIT(A) erred in confirming levy of fee Charged u/s 234E of I.Y. ACT 1961 for the period prior to 01/06/2015..</i>		0
4. <i>The learned CIT(A) ought to have held that fee u/s 234E of I.T. Act 1961 should not be charged for assessment years prior to 01/06/2015.</i>		0
5. <i>The learned A.O. ought to not have levied fee u/s 234E of I.T.Act 1961 as assessee was prevented on account of reasonable cause.</i>		
6. <i>Any other ground that shall be prayed at the time of hearing.</i>		0
<i>Total Tax Effect</i>	<i>Rs.</i>	<i>39,200/-</i>

3. It appears that CIT(A) has dismissed the delay in filing the appeal by observing as follows:

“1. In the case of assessee, order u/s 200A of I.T not Act 1961 has been passed on 31/01/2014. The due date of submission of appeals against above order passed u/s 200A of IT Act 1961 was 01/03/2014, Accountant of the assessee had omitted to download the order and it escaped from his: attention to submit appeal due. to busy schedule of filing of return of income under Income Tax Law. Thus there is delay of 3218 days in filing appeals before Commissioner of Income Tax (Appeal) Nagpur.

2. It is respectfully account of mistake of accountant of assessee and submitted that delay in submission of appeals is on there is no negligence on part of assessee or any malafide intention to delay the filling of appeal.

3. After getting TDS return filled by accountant assessee was under the bonafide belief that all the formalities of TDS return filling is over and has accepted the filling receipt of TDS return as compliance of TDS. The delay in filling appeal

was due to non communication to assessee in respect of order passed by CPC TDS.

4. Assessee most respectfully submit that the order U/S 200A referred to in the impugned notice has not been received by assessee. In fact, Assessee was made aware of the said order only when the range officer of TDS department called assessee for recovery of penalty in above order. The assessee first time in the month of November 2022 was telephonically intimated by the range TDS officer of range that there is delay in filling TDS return and penalty for said belated filling is levied on assessee and dues for same penalty is outstanding. Not filing the aforesaid appeal within date is beyond the control of assessee as he was not aware about order passed by CPC TDS.

The delay in filing the appeal is on account of lack of knowledge of order passed by TDS CPC and is not malafide or intentional.

5. Assessee on coming to know about such genuine and Unintentional lapse on the part of accountant of assessee has approached to Senior Counsel to file appeal before Hon'ble CIT Appeal. Counsel of the assessee is downloading the order u/s 200A of I.T. Act 1961 from Traces portal on 16- 12-2022 and prepared the appeal. The delay in filing appeal is primarily on account of bonafide and inadvertent mistake of accountant of assessee is not malafide.

6. The assessee states that the order was passed on 31/01/2014 and the appeal is presented on 23/12/2022 the same is therefore delayed by 3218 days. It is respectfully submitted that there was no intention on part of assessee to file the appeal at the belated stage of the proceedings. The assessee has a prima facie good case on merit hence the application for condonation of delay needs to be allowed and the delay needs to be condoned in the interest of justice.

7. Assessee places reliance on the decision of Hon'ble Bombay High Court in the case of Vijay Vishin Meghani in ITA No. 493 of 2015 vide order dated 19/09/2017 wherein delay of 2984 days in filing appeal has been condoned by Hon'ble Jurisdictional High Court. The ratio laid down by the aforesaid decisions squarely applies to the facts in case of assessee and considering the same delay in filing appeal may kindly be condoned.

8. The assessee states that the order was passed on 31/01/2014 and the appeal is presented on 23/12/2022. As per order of Hon'ble Apex Court in Miscellaneous Application No. 21 of 2022 in 665 of 2021 in SMW (C) No. 3 of 2020 the period from 15/03/2020 till 28/02/2022 shall be excluded for computing period of limitation for any appeal. Out of delay of 3218 days, delay of 715 days because of Covid-19 pandemic from 15/03/2020 till 28/02/2022 may not be counted in view of direction of honourable Supreme Court. So there is a delay of 2503 Days in filling of appeal. In view of above, there is 2503 days delay in filing of appeal in the case of assessee. So, there is delay of 2503 days may be ignored in terms of above order of Bombay High court.

9. *The assessee submits that no hardship or prejudice will be caused to the revenue in case the application is allowed and delay in condoned however if application for condonation of delay is rejected the assessee may loose a valuable right of appeal. In view of above, it is humbly submitted that liberal view be taken and application be allowed and delay be condoned in the interest of justice.*

10. *The delay in submission of present appeal is absolutely unintentional and bonafide and inadvertent mistake on the part of the accountant of assessee and is sufficient cause for condoning the delay in filing of appeal. There is no malafide intention to delay the filing of appeal. In view of above the delay in filing appeal may kindly be condoned and appeal of appellant be admitted for adjudication on merits. PRAYED ACCORDINGLY,*

Decision-

3. *I have examined facts of the case as also considered request of the appellant for condonation of delay in filing of appeal. In this case, the appellant has admitted delay of 3218 days in filing of appeal. The reason for this delay is explained at sl. No. 15 of Form-35. The reasons are reproduced below-*

1. *In the case of assessee order u/s 200A of IT Act 1961 has been passed on 31/01/2014. The due date of submission of appeals against above order passed u/s 200A of IT Act 1961 was 01/03/2014. Accountant of the assessee had omitted to download the order and it escaped from his attention to submit appeal due to busy schedule of filing of returns of income under Income Tax Law. Thus there is delay of 3218 days in filing appeals before Commissioner of Income Tax (Appeal) Nagpur.*

2. *It is respectfully submitted that delay in submission of appeals is on account of mistake of accountant of assessee and there is no negligence on part of assessee or any malafide intention to delay the filling of appeal.*

3. *After getting TDS return filled by accountant assessee was under the bonafide belief that all the formalities of TDS return filing is over and has accepted the filling receipt of TDS return as compliance of TDS. The delay in filling appeal was due to non-communication to assessee in respect of order passed by CPC TDS.*

4. *Assessee most respectfully submit that the order U/s. 200A referred to in the impugned notice has not been received by assessee. In fact, Assessee was made aware of the said order only when the range officer of TDS department called assessee for recovery of penalty in above order. he assessee first time in the month of November 2022 was telephonically intimated by the range TDS officer of range that there is delay in filling TDS return and penalty for said belated filling is levied on assessee and dues for same penalty is outstanding. Not filling the aforesaid appeal within date is beyond the control of assessee as he was not aware about order passed by CPC TDS. The delay in filling the appeal is on*

account of lack of knowledge of order passed by TDS CPC and is not malafide or intentional.

5. Assessee on coming to know about such genuine and unintentional lapse on the part of accountant of assessee has approached to Senior Counsel to file appeal before Hon'ble CIT Appeal. Counsel of the assessee is download the order u/s 200A of IT Act 1961 from traces portal on 16.12.2022 and prepared the appeal. The delay in filling appeal is primarily on account of bonafide and inadvertent mistake of accountant of assessee is not malafide.

6. The assessee states that the order was passed on 31.01.2014 and the appeal is presented on 23.12.2022 the same is therefore delayed by 3218 days. It is respectfully submitted that there was no intention on part of assessee to file the appeal at the belated stage of the proceedings. The assessee has a prima facie good case on merit hence the application for condonation of delay needs to be condoned in the interest of justice.

7. Assessee places reliance on the decision of Hon'ble Bombay High Court in the case of Vijay Meghani in ITA No. 493 of 2015 vide order dated 19.09.2017 wherein delay of 2984 days in filling appeal has been condoned by Hon'ble jurisdictional High Court. The ratio laid down by the aforesaid decisions squarely applies to the facts in case of assessee and considering the same delay in filing appeal may kindly be condoned.

8. The assessee states that the order was passed on 31.01.2014 and the appeal is presented on 23.12.2022. As per order of Hon'ble Apex Court in miscellaneous Application no. 21 of 2022 in 665 of 2021 in SMW (C) No. 3 of 2020 the period from 15.03.2020 till 28.02.2022 shall be excluded for computing period of limitation for any appeal. Out of delay of 3218 days, delay of 715 days because of Covid-19 pandemic from 15.03.2020 till 28.02.2022 may not be counted in view of direction of honorable Supreme Court. So there is a delay of 2503 days in filing of appeal. In view of above, there is 2503 days delay in filing of appeal in the case of assessee. So there is delay of 2503 days may be ignored in terms of above order of Bombay High Court.

9. The assessee submits that no hardship or prejudice will be caused to the revenue in case the application is allowed and delay is condoned however if application for condonation of delay is rejected the assessee may lose a valuable right appeal. In view of above, it is humbly submitted that liberal view be taken and application be allowed and delay be condoned in the interest of justice.

10. The delay in submission of present appeal is absolutely unintentional and bonafide and inadvertent mistake on the part of the accountant of assessee and is sufficient cause for condoning the delay in filling of appeal. There is no malafide intention to delay the filing of appeal. In view of above the delay in filing appeal may kindly be condoned and appeal of appellant be admitted for adjudication on merits. PRAYED ACCORDINGLY.

Summing up, the appellant has attributed the delay in filing of appeal to the mistake of his accountant as according to him, the latter failed to download the impugned order. This explanation is not acceptable for following reasons-

- 1. The mistake continued for 8 years during which the appellant would have filed many TDS forms, TDS returns, Income Tax Returns etc on portal and it is not acceptable that the accountant failed to notice the impugned order,*
- 2. It is the responsibility of the person, who is supposed to make compliance as per law and not his employee or his counsel, to ensure and make such compliance,*
- 3. The appellant voluntarily chose and hired the employee and he cannot now avoid the consequences of the acts or omissions of his employee,*
- 4. The appellant cannot take excuse of omission of his employee,*
- 5. If this shifting of burden of making compliance is accepted, the person who is supposed to make compliance as per law will use this practice by just producing affidavit(s) from his employee/counsel as these employees and counsel will not have to suffer consequences of non-compliance,*
- 6. No case should be left open for unlimited period,*
- 7. The facts of the present case are different from facts in the case of Hon'ble Bombay High Court decision in the case of Vijay Vishin Meghnani, [2017] 86 taxmann.com 98.*

Considering the reasons stated for delay and facts of the case, the appellant has failed to furnish plausible explanation for the delay and, therefore, the delay in filing of appeal is not liable for condonation. In view of above discussion, I am satisfied that this case is not a fit case for condonation of delay. It is, therefore, not condoned. The appeal is, therefore, dismissed with no comments on grounds of appeal.”

4. From the reasons submitted, we find that the order u/s 200A was not received by the assessee. The assessee was aware of the order only when action was taken for recovery of penalty in the month of November 2022. He was able to download the order from the portal on 16th December, 2022 and has submitted the appeal on 23rd December, 2022. There is reasonable and sufficient cause for condonation of delay because the assessee has remained vigilant and was prevented by sufficient cause for not submitting

the penalty in time. Accordingly, we condone the delay and proceed for adjudication.

5. The short point of consideration is whether the imposition of late fee u/s 234E before 01.06.23015 is justified or not? We find that the matter is already covered by the order of Nagpur Bench passed by the same constitution in the case of **Bank of India (ITA Nos. 93, 94 and 95/Nag/2023) dated 01/05/2024**. The said order is reproduced below:

“The present appeals have been filed by the assessee challenging the impugned orders of even date 10/02/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (“the learned CIT(A)”), for the assessment year 2013–14 and 2014–15.

2. Since all these appeals pertain to the same assessee involving common issues arising out of identical set of facts and circumstances, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this consolidated order.

3. The only issue involved in all these appeals is, whether the Assessing Officer can levy late fee prescribed under section 234E of the Act, when the quarterly return filed by the tax deductor for the period prior to 1st June 2015, particularly when the law has been amended by Finance Act, i.e., 1st June 2015, enabling the Assessing Officer to compute the late fee while processing TDS return under section 200A of the Act.

4. In the present case, the Assessing Officer has levied the late fee under section 234E for delay in filing of Form no.26Q amounting to ` 22,420, for the financial year 2012–13 2013–14 relevant to the assessment year 2013–14 and 2014–15 respectively.

5. When these appeals were taken up for hearing, the learned Counsel for the assessee submitted that the Co-ordinate Bench of the Tribunal, Nagpur Bench, Nagpur, has decided the issue in favour of the assessee in a batch of the cases in Bank of India v/s ACIT, ITA no.104/Nag./2022, etc., order dated 06/06/2022,, and submitted that the Assessing Officer cannot levy late fee under section 234E of the Act. He further submitted that the Co-ordinate Bench of the Tribunal, Chennai Bench, Chennai, in S.S.S. Construction v/s ACIT, ITA no.3495 to 3504/Ch./2019, order dated 22/04/2022, has considered the very same issue and decided the same in favour of the assessee and submitted that the same may be followed.

6. On the other hand, the learned Departmental Representative has submitted that the issue before this Bench has been decided by the Co-ordinate Bench of this Tribunal, Nagpur Bench, Nagpur, in DIGP Group Centre CRPF, ITA no.296-309/Nag./2022, order dated 18/07/2023, wherein the Tribunal has decided the issue in favour of the Department and prayed for the said order be followed.

7. We have heard the arguments of the rival parties, perused the material available on record and gone through the orders of the authorities below. In the present case, the Assessing Officer has levied late fee under section 234E of the Act for the assessment year 2013-14 and 2014-15. The amendment to the provisions of section 200A of the Act came into effect from 1st June 2015. The Co-ordinate Bench of the Tribunal, Chennai Bench, Chennai, in S.S.S. Construction (supra) has considered this issue by following the judgment of the Hon'ble Karnataka High Court in Fatehraj Singhvi v/s Union of India, [2016] 289 CTR 602 (Kar.) and also considered the judgment of the Hon'ble High Court in Olari Little Flower Kuries Pvt. Ltd. v/s Union of India, [2022] 134 taxmann.com 111 (Ker.) holding that the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated returned filed for the period prior to 1st June 2015 is invalid. Relevant portion, vide Para-4 of the order dated 22/04/2022 (supra), is extracted below:-

"4. None appeared for the assessee. We have heard learned DR and perused orders of the authorities below. We find that the learned CIT(A) has disposed off appeals filed by the assessee on technical grounds without condoning delay in filing appeals, although, the assessee has filed petition for ITA No. 3495 to 3504/Chny/2019 condonation of delay. We find that the issue involved in the present appeals filed by the assessee is on levy of late fee u/s.234E of the Act, for belated filing of quarterly TDS returns beyond prescribed date and this issue is covered by various decisions of the Tribunal and High Courts, including decision of the co-ordinate Bench of ITAT., Chennai. The Tribunal in the case of M/s. M.F. Textiles Pvt.Ltd. Vs. ACIT in ITA Nos. 578 & 579/Chny/2021 dated 24.02.2022 had considered an identical issue in light of provisions of section 234E of the Act and also amendment to section 200A by Finance Act, 2015 w.e.f. 01.06.2015 and held that in absence of enabling provision u/s.200A of the Act, the Assessing Officer cannot levy late fee u/s.234E of the Act for belated filing of quarterly TDS return for period prior to 01.06.2015. The relevant findings of the Tribunal in ITA Nos.578 & 579/Chny/2021 dated 24.02.2022 are reproduced as under:-

" 5. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The solitary issue that needs to be resolved in the given facts and circumstances of the case is whether the Assessing Officer can levy late fee prescribed under section 234E of the Act, when the quarterly return filed by the tax deductor for the period prior to 01.06.2015,

when the law has been amended by Finance Act enabling the Assessing Officer to compute late fee while processing TDS returns under section 200A of the Act.

The provisions of section 234E of the Act has been inserted to the statute by Finance Act with effect from 01.07.2012 and provides levy of late fee for belated filing of quarterly return filed by the tax deductor. The Assessing Officer started levying of late fee under section 234E of the Income Tax Act, 1961 while processing quarterly TDS return and started issuing intimation to the assesseees. The issue has been challenged before various Courts by the assesseees by writ and challenged the validity of provision of section 234E of the Act. In some cases, some Courts have granted stay of operation of intimation issued by the Department under section 200A of the Act. Therefore, on the basis of judgement of the Hon'ble High Court, the assesseees have started challenging the intimation issued by the Assessing Officer before the ld. CIT(A). The ld. CIT(A) did not entertain the appeal filed by the assessee on both counts, including on limitation in filing the appeal as well as on merits of the issue and rejected the arguments taken by the assessee and confirmed late fee levied under section 234E of the Income Tax Act, as per mandate of the statute. In the meantime, the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) had considered the issue and after analyzing the provisions of section 234E of the Act and section 200A of the Act and held that in the absence of enabling provision in section 200A of the Act, the Assessing Officer cannot levy late fee under section 234E of the Act, while processing the quarterly TDS return filed for the period of the respective assessment years prior to 01.06.2015. A similar view has been expressed by the Hon'ble Kerala High Court in the case of Olari Little Flower Kuries (P.) Ltd. v. Union of India [2022] 134 taxmann.com 111 (Kerala) after considering the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) and held that the provisions of section 200A of the Act were mandated to enable computation of late fee payable under section 234E of the Act, at the time of processing of quarterly TDS return and the said amendment came into effect from 01.06.2015. Thus, the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated return for the period prior to 01.06.2015 is invalid. Subsequent to the decisions of the Hon'ble Karnataka High Court and the Hon'ble Kerala High Court, series of decisions have been rendered by various Benches of the Tribunal and held that late ITA No. 3495 to 3504/Chny/2019 fee under section 234E of the

Act cannot be levied for the period prior to 01.06.2015, because, there was no enabling provision to levy such late fee.

6. In the present appeals, on perusal of the facts, we find that the assessment years involved are prior to 01.06.2015. Therefore, we are of the considered view that the late fee charged by the Assessing Officer under section 234E of the Act, while processing quarterly TDS return under section 200A of the Act, is without any authority and invalid. Hence, by respectfully following the decision of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka), we are of the considered view that the Assessing Officer cannot levy late fee while processing of TDS return under section 200A of the Act upto the financial year 2014-15. Since, late fee charged in the present case pertaining to the financial year 2013-14, we direct the Assessing Officer to delete the late fee charged under section 234E of the Act in the intimation issued under section 200A of the Act for the processing of quarterly TDS return filed by the assessee.

7. In the result, both these appeals filed by the assessee are allowed."

8. We find that the above decision of the Co-ordinate Bench in S.S.S. Construction (supra) is squarely applies to the assessee's case. Apart from this, the issue is also decided by the Co-ordinate Bench of the Tribunal, Nagpur Bench, in assessee's own case in Bank of India v/s ACIT, ITA no.104/Nag./2022, etc., order dated 06/06/2022, wherein the Tribunal, Nagpur Bench, Nagpur, has decided the very same issue in favour of the assessee. In view of the above, we are of the opinion that the impugned orders passed by the learned CIT(A) for all the assessment years under consideration deserve to be reversed.

9. Insofar as the arguments of the learned D.R. in case of DIGP Group Centre CRPF (supra) is concerned, we find that it relates to the assessment year 2016-17, 2017-18, 2018-19 and 2019-20, whereas, the present appeal relates to the assessment year 2013-14 and 2014-15 and hence, the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, Nagpur, relied upon by the learned D.R. has no application to the facts of the present case for the assessment year under consideration and thus the arguments of the learned D.R. is rejected. Consequently, the impugned orders passed by the learned CIT(A) for all the years under consideration are hereby reversed and the grounds raised by the assessee in this appeal are allowed.

10. In the result, appeals filed by the assesseees are allowed. "

There are no compelling reasons for us to take a different view.
Accordingly, the appeal of the assessee is allowed.

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

Order pronounced on 16/07/2024.

Sd/--
V. DURGA RAO
JUDICIAL MEMBER

Sd/--
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 16/07/2024.

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Rajesh V. Jalit
Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur