

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI GEORGE GEORGE K., VP
AND SHRI INTURI RAMA RAO, AM**

**ITA Nos. 850 to 852/Coch/2024
Assessment Year: 2013-14**

Chakrabarti Eye Care Centre Appellant
Opp. Indianoil Petrol Pump, Kanjirampara SO
Thiruvananthapuram 695030
[PAN: AAFC5336K]

vs.

ACIT, Thiruvananthapuram Respondent

Appellant by: Shri Sreeram Sekhar, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 03.04.2025
Date of Pronouncement: 04.04.2025

ORDER

Per: George George K., VP

These appeals at the instance of the assessee is directed against three separate order of the National Faceless Appeal Centre, Delhi [CIT(A)] (all the orders dated 05.08.2024 passed u/s. 250 of Income Tax Act, 1961 (hereinafter "the Act"). The relevant assessment year is 2013-14.

2. Common issues are raised in these appeals, hence they were heard together and are being disposed off by this consolidated order.

3. Brief facts of the case are as follows: -

The assessee is a partnership firm engaged in medical services. For the financial year 2012-13 the assessee had filed statement of Tax Deducted at Source (TDS) in Forms 24Q and 26Q for various quarters belatedly. The AO issued intimation u/s. 200A of the Act levying late fee u/s. 234E of the Act. The relevant financial year, amount of late fee charged u/s. 234E, various quarters and Form are detailed below: -

| ITA No. | F.Y. | Form | Quarter | Amount |
|----------------|-------------|-------------|----------------|---------------|
| 850/C/2024 | 2012-13 | 24Q | Q-1 | 36,000 |
| 851/C/2024 | 2012-13 | 24Q | Q-1 | 12,500 |
| 852/C/2024 | 2012-13 | 26Q | Q-2 | 17,600 |
| Total | | | | 66,100 |

4. Aggrieved by the levy of late fee u/s. 234E of the Act, assessee filed appeals before the first appellate authority. The appeals were filed before the first appellate authority belatedly. The CIT(A) refused to condone the delay in filing the appeals and dismissed all the appeals. The CIT(A) held that the assessee did not have sufficient cause for not presenting the appeals within the specified period. Therefore, the appeals were dismissed in limine without adjudicating the issues on merits.

5. Aggrieved by the orders of the CIT(A) the assessee has filed the present appeals before the Tribunal. The learned A.R. submitted that the assessee became aware of the judgement of the Hon'ble

Jurisdictional High Court regarding levying late fee u/s. 234E of the Act in favour of the assessee and on being aware of the same immediately appeals were filed before CIT(A). The learned A.R. submitted that the levy of late fee itself is illegal in light of the various judicial pronouncements of the Hon'ble Jurisdictional High Court, hence rejection of the appeals on the reason of delay by the CIT(A) is bad in law. The learned A.R. also placed on record an order of the CIT(A) wherein on identical facts the CIT(A) had condoned the long delay of filing the appeal before him and decided the issue in favour of the assessee. The order of the CIT(A) dated 26.02.2019 in ITA No. 687/EF/TVM/ CIT(A)/TVM/2018-19 was placed on record. The learned A.R. reiterated that when levy of late fee itself is bad in law, a liberal approach ought to be taken while condoning the delay. In this context the learned A.R. relied on the judgement of the Hon'ble Apex Court in the case of Collector Land Acquisition v. Mst. Katij & Ors reported in 167 ITR 471 (SC).

6. On the other hand, the learned Sr. DR strongly supported the orders of the CIT(A).

7. We have heard the rival submissions and perused the material on record. It is not in dispute if the ratio laid down by the Hon'ble Jurisdictional High Court in various cases is applied. The levy of late fee u/s. 234E of the Act would be illegal for the returns of TDS in respect of period prior to 01.06.2015. The case laws of the Hon'ble Jurisdictional High Court which had held that the levy of

late fee u/s. 234E of the Act would be illegal for the return of TDS in respect of period prior to 01.06.2015 are as follows: -

- i) Nila Bakers & Confectioneries (I) (P.) Ltd. vs. Income Tax Officer (TDS) [2022] 139 taxmann.com 535 (Kerala).
- ii) Eurotech Maritime Academy (P.) Ltd. vs. Income Tax Officer (TDS) [2022] 137 taxmann.com 63 (Kerala)
- iii) Jiji Varghese vs. Income Tax Officer (TDS) [2022] 139 taxmann.com 339 (Kerala)
- iv) Olari Little Flower Kuries (P.) Ltd. vs. Union of India [2022] 134 taxmann.com 111 (Kerala)

8. The present appeals of the assessee relates to the TDS returns filed prior to 01.06.2015. The reasons stated by the assessee for belatedly filing the appeals before the CIT(A) is that the assessee's counsel did not bring to its notice the various judgements in favour of the assessee as regards to levy of late fee u/s. 234E of the Act prior to 01.06.2015. Further it is stated when the assessee became aware of the judgement of the Hon'ble Jurisdictional High Court on merits being in its favour, immediately appeals were instituted before the first appellate authority.

9. The Hon'ble Supreme Court in the case of Collector Land Acquisition v. Mst. Katij & Ors (supra) had emphasised that substantive justice should prevail over technical consideration. It was further held by the Hon'ble Court that litigant does not stand to benefit by filing the appeal late. The Hon'ble Court had also stated

that every day's delay must be explained does not mean that pedantic approach should be taken, but a rational/ commonsense approach in pragmatic manner. The relevant finding of the Hon'ble Supreme Court reads as follows:-

... ordinarily a litigant does not stand a benefit by lodging an appeal late. There is no presumption the delay is caused deliberately or on account of culpable negligence or on account of a malafide. A litigant does not stand benefit by resorting to delay. Infact he runs a serious risk, when substantial justice and technical considerations are pitted against each other the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay..."

10. In light of the Hon'ble Jurisdictional High Court judgements cited supra at para 7 of this order it is not in disputed that the levy of late fee prior to 01.06.2015 is without jurisdiction and when the levy u/s. 234E of the Act itself is bad in law, we are of the view that the CIT(A) ought to have taken a liberal approach, while condoning the delay in filing the appeals before him. On identical facts the Bangalore Bench of the Tribunal in the case of Solaron Sustainability Services Pvt. Ltd. vs. ACIT in ITA Nos. 385 to 390/Bang/2029 dated 10.03.2021 had condoned the long delay in filing the appeal before the CIT(A) after taking note of the fact that the Hon'ble Karnataka High Court in the case of Fateeraj Singhvi reported in [2016] 73 taxmann.com 252 (Karn) had held that levy of

late fee u/s. 234E of the Act prior to 01.06.2015 is illegal. The relevant findings of the Bangalore Bench of this Tribunal in the case of Solaron Sustainability Services Pvt. Ltd. (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 & ITA Nos.385 to 390/Bang/2019 Page 8 of 9 8 178/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.”

11. Similar view has been also held by the Bangalore/Cochin Benches of the Tribunal in the following case: -

- i) Atlas Brands (P) Ltd. vs. CIT (TDS) [2022] 137 taxmann.com 191 (Kar.)
- ii) Anumod Viswambharan vs. ITO (TDS) [2023] 152 taxmann.com 394 (Cochin Trib.)
- iii) Prakat Solutions Pvt. Ltd. vs. DCIT, ITA Nos. 531 to 533/Bang/2023 dated 27.09.2023

12. In light of the aforesaid reasoning and relying of the judicial pronouncements cited supra we condone the delay in filing the appeals before the CIT(A). Since the issue on merits had not been decided by the CIT(A), we restore the matter to the file of the CIT(A) to adjudicate same on merits. It is ordered accordingly.

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

Order pronounced in the open court on 4th April, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
GEORGE GEORGE K.
VICE PRESIDENT

Cochin, Dated: 4th April, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

Assistant Registrar
ITAT, Cochin