

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA Nos.703-707/RJT/2024

**(निर्धारण वर्ष /Assessment Years:
(2009-10, 2010-11, 2011-12 to 2013-14)**

| | | |
|---|--------------|-----------------------------|
| Vidhyotejak Samaj H.B. Jasani Vidya Bhavan, Chhelbhai Dave Marg, Vidhyanagar, Rajkot-360 001 | बनाम/ Vs. | ACT, CPC, TDS, Ghaziabad |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAATV 1358 G | | |
| (अपीलार्थी /Assessee) | | (प्रत्यर्थी /Respondent) |

निर्धारिती की ओर से / Assessee by : Shri Kalpesh Doshi, Ld. AR

राजस्व की ओर से / Revenue by : Shri Abhimanyu Singh Yadav, Senior-DR

सुनवाई की तारीख/ Date of Hearing : 22/07/2025

घोषणा की तारीख/Date of Pronouncement : 28/07/2025

आदेश/Order

PER BENCH:

This bunch of five appeals filed by single assessee, are directed against the separate orders passed by the Learned Commissioner of Income-Tax (Appeals)-1, Rajkot (for short 'Ld. CIT(A)' dated 16.12.2019 and 11.01.2019, which in turn arose out of separate orders passed by the Assessing Officer u/s 200A(1) of the Income Tax Act 1961, (hereinafter referred to as 'the Act'), for assessment years (AYs) 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively.

2. Since the issues involved in all these appeals are common and identical; therefore, these appeals of the assessee have been clubbed and heard together, and a consolidated order is being passed for the sake of convenience and brevity.

3. These five appeals filed by the assessee, are barred by limitation by 1672 days. The assessee has moved a petition requesting the Bench to condone the delay. The contents of the petition of condonation of delay and the contents of the affidavit filed before the Bench, in respect of these five appeals are similar and identical. Therefore, we take into account a sample copy of petition for condonation of delay, which is filed by the assessee in ITA No.703/RJT/2024, for assessment year 2009–2010.

4. The Ld. Counsel for the assessee has explained the sufficient cause of delay in filing these five appeals stating that the assessee-trust is engaged in carrying out educational activities and running the college in the name of “Jasani Arts and Commerce College”. The trust is in receipt of the order of ld. CIT(Appeals) for A.Y 2009-10, 2011-12 to 2013-14 and the appeal before Tribunal was to be filed within 60 days from the date of receipt of the order of ld.CIT(Appeals) that is, on 14.02.2020. The solitary disputed issue in the assessee’s case is that the demand has been raised for the payment of TDS, as there were various technical errors in filing TDS returns and this error could be resolved by correcting the data furnished in the console file. The ld. CIT(A) has duly allowed the appeal of the assessee by directing the Assessing Officer to provide the console file for making correction in TDS returns. Therefore, the trust was anticipating receipt of console files from the Assessing Officer, as per the direction issued in the order by the ld.CIT(A). However, despite this direction, by ld.CIT(A), the console files have not been made available so far. Further, the appeal effect order pertaining to these matters have not been issued to the assessee till date. As per the direction of the ld. CIT(A), the trust has duly filed requested letters, before the Assessing Officer to provide the console files and also the Authorised Representative has personally attended the office of the Assessing Officer

and requested the same. The details of all replies filed by assessee-trust are as under:

| <i>Date of reply/filing reply</i> | <i>Addressing Authority</i> | <i>Remarks</i> |
|-----------------------------------|-----------------------------|---|
| 02/06/2022 | ITO, TDS-2, Rajkot | <ul style="list-style-type: none"> ✓ The detailed reply describing the fact that the Ld. CIT(A) has allowed the appeal and Ld. CIT(A) has directed the jurisdictional officer to provide console file. ✓ Further, the trust has requested to give appeal effect order and to provide console files |
| 19/09/2022 | DCIT, TDS Circle, Rajkot | |
| 09/02/2023 | ITO, TDS-2, Rajkot | |
| 18/07/2024 | DCIT, TDS Circle, Rajkot | <ul style="list-style-type: none"> ✓ The detailed reply describing the fact that the Ld. CIT(A) has allowed the appeal and Ld. CIT(A) has directed the jurisdictional officer to provide console file. ✓ Further, the trust has requested to give appeal effect order and to provide console files. |

5. With help of the above chart, the learned Counsel stated that since the direction as provided in the order of the Id. CIT(A), has not been complied by the Assessing Officer, therefore, assessee-trust had no alternative remedy except to file appeal before this Tribunal. This process took a lot of time and therefore, resulted into delay in filing these five appeals by 1672 days (each appeal). The Id.Counsel also stated that time taken by the Assessing Officer for not making available console files may be allowed as reasonable cause and such time period may be ignored due to *bona fide* reasons. The Id. Counsel further stated that assessee-trust may also be granted the benefit to condone the delay period till 31.05.2022 as part of CIVID -19 pandemic period, as per the direction of Hon'ble Supreme Court. Therefore, effective time period for considering delay will be from the date 01.06.2022, therefore, total effective days of delay is 834 days only. The Id. Counsel finally stated that assessee has explained the sufficient cause for the delay, hence, delay in filing, each appeal may be condoned, and these five appeals may be admitted for hearing on merit.

6. On the other hand, the Ld. Sr-DR for the Revenue stated that assessee is an educational institution and TDS has been deducted from the salary of the Lecturers and Professors and staff of the college. While filing TDS return, there was punching error of the data and since the data has not been correctly filled in the system, therefore this TDS mismatch has arisen. The ld Sr-DR agreed that assessee was under process to get the rectified entries done, by the Assessing Officer, and in this process of rectification such delay has happened, and since the part delay is covered by the COVID-19 pandemic disease, therefore, the delay may be condoned and matter may be restored back to the file of the Assessing Officer to see the reconciliation statement of the assessee, pertaining to TDS and remove the defect/mismatch as per the provisions of law.

7. We have heard both the parties on this preliminary issue. We note that Ld. CIT(A) had directed the Assessing Officer to correct the *bona fide* error, in TDS mismatch, however, the Assessing Officer did not follow the instruction of Ld. CIT(A) to correct the mis-match in the TDS-statement. Some of the mismatch had been corrected by the Assessing Officer, however, a few mismatch have not been corrected by the Assessing Officer, therefore, the assessee has decided to file this appeal before this Tribunal, and this is the solitary reason for such delay. In these five appeals, the reasons for delay is same and identical. Therefore, we note that the contents in the petition for condonation of delay, in these appeals are same, and these appeals relate to the same assessee. We have gone through the petition for condonation of delay, and the sufficient cause explained by the assessee, in the petition for condonation of delay. The delay had occurred because Ld. CIT(A) has allowed all the appeals for statistical purposes to rectify the mis-match, however, the Assessing Officer rectified only some mis-match and

some other mis-match has not been rectified, therefore, the assessee has filed these five appeals before this Tribunal with condonation of delay.

8. We note that total effective days of delay is 834 days only, after excluding the period of COVID-19 pandemic disease. We note that Hon`able Supreme Court in a suo-motu writ petition/ Miscellaneous application no. 21 of 2022 dated 10.01.2022 held that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

9. The exercise of discretion in condonation of delay in matters of limitation, such as in the present case, has to be carried out within the meaning of "**Sufficient Cause**" as envisaged in Section 5 of Limitation Act. Hence, the general rule of law of limitation is that an extension shall not be granted under Section 5 if there is no sufficient cause or cogent ground for the condonation of delay, the onus of proving which lies on the appellant, as clearly laid down in the judicial pronouncements by the Highest Courts of Law. Therefore, we are of the view that provisions of law have to be adhered strictly and that one cannot be allowed to act in leisure and make a mockery of enacted law, because law and provisions are laid down to benefit both sides of litigation. Be that as it may, we have to do justice and the Hon`ble

Supreme Court in the case of Collector, Land Acquisition vs Mst. Katiji and others, reported in 167 ITR 471, (1988) SC 897) (7) observed as follows:

“4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.....”

10. When we weigh these two aspects then the side of justice becomes heavier and casts a duty on us to deliver justice. We note that the reasons given in the affidavit for condonation of delay, was convincing, and the reason would constitute reasonable and sufficient cause for the delay in filing these appeals. A perusal of the reasons and sufficient cause explained by the Id. Counsel for the assessee, gives us an impression of existence of mitigating circumstances to enable us to exercise our discretion in favour of the assessee. Considering the above facts and circumstances of the cases, as narrated above, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. Accordingly, we condone the effective delay of 834 days and admit all the appeals of the assessee to adjudicate on merit.

11. On merit, at the outset, Ld. Counsel for the assessee, submitted that there was data entry error, which has resulted into mismatch in the TDS-statements/payments. In the impugned order u/s 200A(1) of the Act, issued by CPC-AO, the said mismatch has resulted into false demand. The Id. Counsel submitted that the TDS- entry, error relate to quantum of salary, however, the TDS has been deducted correctly on the net taxable salary, but while filling the PAN number in the system, there was an error and this has resulted into mismatch in the TDS-statement/return, which needs rectification. Therefore, assessee-trust filed appeals before the Tribunal to correct rectification in the remaining TDS-mismatch and in order to get the

mis-match removed. Up to the assessment stage, wherein the Assessing Officer has corrected some of the mis-match and some of the mis-match has not been corrected. The Id. Counsel for the assessee submitted before the Bench, a statement showing mismatch in TDS and prayed the Bench that suitable direction may be given to the Assessing Officer to correct the mismatch in TDS and allow the benefit to the assessee.

12. The Id. Senior DR for the Revenue debarred from objecting the stand of the Id. Counsel. The Id. Sr-DR for the Revenue did not have any objection if these matters are remitted back to the file of Assessing Officer to examine the reconciliation of the TDS mismatched and then allow relief to assessee in accordance with law.

13. We have heard both sides in detail and also perused the records of the case including the paper book and reconciliation of TDS mis-match, filed by the assessee-trust. We note that the assessee has made data entry errors while filing TDS returns through NSDL. The assessee has included the TDS paid in earlier quarter also in the subsequent quarters in the TDS statements. This data entry error has resulted in mismatch as the TDS payments of earlier quarters did not actually pertain to the subsequent quarters. In the impugned order u/s 200A(1) of the Act issued by CPC-AO, this mismatch has resulted into demand on account of TDS mismatch. The other data entry error relates to the quantum of salary. It was contended by Id. Counsel that when the TDS has been deducted correctly on the net taxable salary, however, in the TDS return, the gross salary has been punched and therefore in the order of CPC demand on account of short deduction of TDS was computed, which is incorrect. We note that during the appellate proceedings, the Id CIT(A) called a remand report from the Assessing Officer. In the remand report, the ITO-TDS has contended that it is the tax payer who has to rectify the errors

made by it and file the revised return. He has further contended that as and when the assessee rectifies the errors and as a revised return, the tax liabilities will be reduced/removed automatically. The Id. Counsel has contended that there is no facility in the TDS module which allows correction by the assessee. The Id.Counsel contended that assessee can make the correction, if the Assessing Officer allows the access to assessee to CONSOLE file in the TDS module. The Id. Counsel for the assessee for this purpose, submitted that some of the mismatch has been accepted by the Assessing Officer. However, the following mismatch because of wrong punch of the PAN etc., are to be rectified by the Assessing Officer. The details of which reproduced below:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL, RAJKOT
IN THE CASE OF VIDHYOTEJAK SAMAJ, RAJKOT
ITA NO. 703 TO 707/RJT/2024 AY 2009-10 TO 2013-14 FIXED FOR HEAING ON 20/07/2025

| Assessment year | Financial year | ITA No. | Quarter | From | Old demand | Current demand | Remarks |
|-----------------|----------------|------------|---------|------|------------|----------------|--|
| 2009-10 | 2008-09 | 703/Rjt/24 | Q1 | 24Q | 1,800 | 1,800 | Due to error in quoting PAN, Hon'ble ITAT is requested to give direction to Id. ITO TS to rectify the PAN o Smt. Nilaben Madhubhai Shah AGNPS7122C, which is correct PAN of the employee |
| | Total | | | | 1,800 | 1,800 | |
| 2013-14 | 2012-13 | 707/Rjt/24 | Q4 | 24Q | 29,12,520 | 3,87,990 | Hon'ble ITAT is requested to give direction to grant credit of challan of Rs.2,83,700 to Id. ITO TDS which is not granted and therefore the demand is raised. |
| | Total | | | | 29,12,520 | 3,87,990 | |

We have gone through the above statement and noticed that since the assessee has made data entry errors while filing return of TDS, hence assessee should be given an opportunity to make the corrections. We further find that claim of the assessee seems to be genuine, therefore, we remit all these five appeals back to the file of Assessing Officer with a direction to allow the access to the assessee to CONSOLE file in the TDS module and

examine the reconciliation of mismatch (TDS-mismatch) and rectify the same as per the provisions of law.

14. In the result, these five appeals filed by the assessee, are allowed for statistical purposes, in above terms.

A copy of the instant common order be placed in the respective case file(s)

Order is pronounced on 28/07/2025 by placing the result on the Notice Board.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/ **Judicial Member**

Sd/-
(DR. A.L. SAINI)
लेखा सदस्य/ **Accountant Member**

राजकोट /Rajkot

दिनांक/ Date:28/07/2025

DKP Outsourcing Sr.P.S

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

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकरअ पीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्डफाईल/ Guard File

// True Copy //

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, राजकोट