IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR

BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM

ITA Nos. 75 & 76/Jodh/2022
(ASSESSMENT YEARs- 2013-14 & 2014-15)

Dinesh Infrastructure Private Limited G F 4,5 Razdan Mansion Inside Jalori Gate, Jodhpur	Vs	DCIT, Circle-2, Jodhpur.
(Appellant)		**(Respondent)**
PAN NO. AABCD 8076 A		

(Virtual hearing)

Assessee By	Shri Raksha Birla-C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	05/07/2023
Date of Pronouncement	04/10/2023

O R D E R

PER: Dr. S. Seethalakshmi, JM

These are two appeals filed by the assessee against two different orders of the National Faceless Appeal Centre, Delhi [herein after "NFAC/Ld.CIT(A)"] both dated 12.04.2022 & 21.04.2022 for the assessment years 2013-14 and 2014-15 respectively.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are

taken from the folder of Dinesh Infrastructure Pvt. Ltd. in ITA No. 75/Jodh/2022 and this case is taken as lead case.

3. The assessee in ITA No. 75/Jodh/2022 has raised the following grounds of appeal:-

"1. That on the facts and in the circumstances of the case, the CIT(A)NFAC has grossly erred in violating the principal of faceless appeal as announced for justice of honest taxpayers and the functioning of faceless processing's in honesty and judicially manner and to avoid litigation as created unnecessary by AO.

2. That on the facts and in the circumstances of the case the Ld.CIT(A), NFAC erred in upholding the validity of order passed by the Ld. AO u/s 154 of the Act.

3. That on the facts and in the circumstances of the case the ld CIT(A) erred in holding the appeal filed by belatedly by the appellant by more than 4 years which is contrary and incorrect facts.

4. That on the facts and in the circumstances of the case the CIT(A), NFAC grossly erred in upholding the levy of aggregate late fee of Rs.63200/-u/s 234E, of IT Act, 1961 without appreciating the law and facts of the case.

5 That on the facts and in the circumstances of the case the CIT(A), NFAC grossly erred in not taking to consider the submission and judicial decisions in judicious manner while sustaining the levy of fee u/s 234E of the Act.

6 That on the facts and in the circumstances of the case the CIT(A), NFAC grossly erred in without analyzing the provision of law in right prospective and sustained the demand created by Id AO.

7. That on the facts and in the circumstances of the case the CIT(A) NFAC grossly erred in representing erroneous and irrelevant finding in the order and thereby sustaining arbitrary addition in a hypothetical way by putting the assessee to erroneous harassment and inconvenience.

8. That the petitioner may kindly be permitted to raise any additionalor alternative grounds at or before the time of hearing.

9. The petitioner prays for justice & relief."

4. Brief facts of the case are that the assessee has filed TDS return for the fourth quarter (Q4) 26Q of Financial year 2012-13. The return was processed by TDS, Centralized Processing Cell on 23.12.2013, late filing fee amounting to Rs. 38,200/- was levied. The assessee requested for rectification of order u/s 200A. The AO passed an order of correction on 10.12.2017. Again the assessee applied for rectification u/s 154 for which the AO passed the order on 13.06.2019 without giving any relief as requested by the assessee. The count of correction statements processed for this quarter as per intimation u/s 154 of the I.T. Act dated 13.06.2019.

5. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

> "7.22 From the above decisions it becomes clear that in the case of condonation of delay where the appeal was filed beyond the limitation of period, the courts are empowered to condone the delay, provided that the Appellant can prove his claim of inability to file appeal within the prescribed period. Litigant must be able to demonstrate that there was "sufficient cause" which obstructed his action to file Appeal beyond the prescribed time limit. The law of limitation is found upon the maxims "Interest Reipublicae Ut Sit Finis Litium" that litigation must come to an end in the interest of society as a whole, and "vigilantibus non dormientibus Jura subveniunt" that the law assists those that are vigilant with their rights, and not those that sleep thereupon. The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the state and the litigant. The Single Judge bench of the Hon'ble Madras HC, while exercising writ jurisdiction in Kathiravan Pipes Pvt Ltd, v CESTAT, 2007 [5] STR 9 (Mad) has observed that the period of limitation prescribed is not for destruction of a statutory right but only to give finality without protracting the matter endlessly.
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> 7.22. In the present case, it clearly emerges that the appellant had not filed the appeal within a period of 30 days after receipt of the impugned intimations u/s 200A dated 23.12.2013 as prescribed u/s.249(2) of the Act. It has only filed an appeal against the rectification u/s. 154 r.w.s.200A dated 13.06.2019 wherein the levy of Late Filing Fee u/s.234E vide original intimation u/s.200A dated 23.12.2013 is sought to be challenged after a delay of 1968 days.
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> 7.23. From the point of substantive justice also, at the time of filing the present appeal, the appellant has not even adduced any reasonable cause which prevented it from filing a valid appeal within the 30 days' time limit u/s.249(2) against the intimation u/s.200A (1) dated 23.12.2013and even beyond for nearly six years. Unless and until it is demonstrated that there was a sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, the delay thereafter cannot be condoned without there being compelling grounds as advocated by the Hon'ble Courts.
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> 7.24 These submissions were carefully considered.

The appellant has contended that CPC has erred in charging late fees amounting to Rs. 38,200/- U/s. 234E. In support of his contention, he has quoted various decisions such as Hon'ble SC decision in CIT vs. Vatika Township Pvt Ltd. [2014] 367 ITR 466 (SC). He also quoted Hon'ble Karnataka High Court Writ Appeal Nos.2663-2674/2015(T-IT) & Ors in Sri Fatheraj Singhvi & Ors Vs. Union of India & Ors. He also contended that it is a mistake apparent on liable to be rectified in light of decision of Hon'ble Supreme Court in the case of Hirday Narain (L) VITO (1970) 78 ITR 26 (SC)]. The appellant also enclosed a copy of Hon'ble ITAT Division Bench, Jodhpur, ITA No. 302 to 305/Jodh/2019 dt. 26.11.2019, in which it was decided that the Amendment to Clause (c) was inserted U/s. 200A of the Act which has been given effect from 01.06.2015, is prospective in nature and no computation of late fee for the demand or intimation for the late fee u/s. 234E could be made for TDS deducted for the respective assessment years prior to 01.06.2015.

The detailed submission and various decisions quoted by appellant are not discussed on merits in view of the fact that the present appeal has been filed belatedly by the appellant by more than 6 years as discussed in paras above.

The actual delay is 1968 days whereas the appellant claims nothing in this regard. It is pertinent to note that details of default summary are e-mailed and simultaneously uploaded in the website TRACES also which the appellant has to necessarily access periodically for filing TDS statements in the subsequent periods as well.

7.25. The appellant had submitted that the power MENT to charge fees u/s. 234E of the Act has come into effect from 01.06.2015. Hence, after the amendment was introduced with effect from 1.6.2015, if there was any bonafide belief of its applicability, the appellant ought to have filed an appeal immediately thereafter. No reasons have been adduced for the delay of more than 4 years after the amendment. Whereas, the present appeal has been filed after more than 4 years from date of the said order. No reasons have been adduced as to why the appeal was delayed even by such reasoning. None of the reasons adduced as above are found to be tenable to constitute a sufficient cause for the inordinate delay of 1968 days, running to almost 6 years.

7.26 For these reasons, the appeal sought to be instituted by the appellant in this case fails for two reasons, one that the impugned levy of Late filing fee u/s.234E does not arise from the intimation u/s.154 dated 13.06.2019 against which appeal is filed but from the earlier intimation u/s.200A dated 23.12.2013, which was never challenged in appeal. Secondly, without prejudice, even if intimation u/s 200A dated 3.12.2013 issued by ACIT TDS CPC, were to be treated as the intended order that was sought to be appealed against by the appellant u/s.249(2) in the

> interest of substantive justice, then also no "sufficient cause" has been shown u/s.249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s.249(2) of the Income Tax Act, 1961 rws 5 of Limitation Act and even thereafter for over 1968 days of delay. Hence the appeal sought to be instituted belatedly against the levy of Late filing fee u/s.234E. by virtue of challenge to the intimation u/s.154 dated 13.06.2019 is hereby held as not admissible in law and on facts.
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> 8. In the result, the appeal is dismissed accordingly."

6. Aggrieved from the order of the ld. CIT(A), the assessee has preferred this appeal on the grounds as stated hereinabove. Apropos to the grounds so raised the ld. AR of the assessee relied upon the decision in the case of Madhya Pradesh Gramin Bank vs. ACIT in ITA No. 222/Ind/2022 to 328/Ind/2022 dated 11.11.2022 wherein he has relied upon the finding of the Bench at page 9 & 10 of the said order of the ITAT Bench. Based on this submission the ld. AR of the assessee submitted that the late fee confirmed by the ld. CIT(A) is required to be reversed. The ld. AR for the assessee further submitted that though it is submitted before the ld. CIT(A) that power to charge fee u/s 234E of the Act has come into effect on 01.06.2015 and therefore, since amendment is prospective the same cannot be applied for the year under consideration. Based on this submission, the ld. AR of the assessee submitted that the late fee the levy and interest thereon is required to be vacated.

7. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

8. We have heard the both the parties and perused the materials available on record. The dispute in this appeal is for F.Y. 2012-13 the power to levy the said late fees u/s 234E of the I. T. Act has is came into effect from 01.06.2015. Therefore, it is prospective in nature. In the light of this facts when the levy was not supported by the law the demand is raised is not in accordance with the law. Similar view is taken by the coordinate Bench in the case of Madhya Pradesh Gramin Bank vs. ACIT (supra) wherein in para 9 and 10 the Coordinate Bench has observed as under:-

> "9. We have considered the rival submissions of both sides and also perused the record. We would observe, in subsequent discussions, that the late fee u/s 234E could not have been levied in the intimations u/s 200A for delay in filing quarterly returns of TDS for the period prior to 01.06.2015. Therefore, by levying late-fee which was not leviable, the Ld. AO has certainly committed a mistake apparent on record. Additionally, we also observe that under the scheme of Income-tax Act, 1961, the assesseee have two remedies against the intimation u/s 200A, viz. (i) file rectification- application u/s 154, or (ii) file appeal u/s 246A. We observe that the remedy to file rectification u/s 154 is not only one of the available remedies but also a simpler remedy and practically resorted to by many of the assessees, particularly in the matter of the late-fee u/s 234E wrongly levied by revenue-authorities. We find that it is not a case of revenue that the rectification-application u/s 154 against the intimation u/s 200A is absolutely barred in the scheme of the Act. We also observe that when the late-fee is not leviable in the law and on facts, by levying the same the assessees have been fastened with the liability beyond and against the scheme of the Act, which should not happen. In this regard, we gainfully refer a recent decision of Hon'ble ITAT, Jodhpur Bench in the case of Akbar Mohammad, Nagaur Vs. ACIT, CPC, Bangalore ITA No. 108

& 109/Jodh/2021 order dated 31.01.2012 in which the Hon'ble Co-ordinate Bench has held thus:

> "6.1 Of course, it is a case in point that the assessee did not file any appeal against the intimations passed us 143(1) of the Act and the Ld. Sr. DR is right to the extent that the assessee cannot be given relief for that reason. However, it is also a settled law that the assessee cannot be taxed on an amount on which tax is not legally imposable. Although, the assessee might have chosen a wrong channel for redressal of his grievance, all the same, it is incumbent upon the Tax authorities to burden the assessee only with correct amount of tax and not to unjustly benefit at the cost of tax payer. Therefore, in the interest of substantial justice, we deem it expedient to restore the issue to the file of the Assessing officer with a direction to pass appropriate orders deleting the addition/ disallowance after duly considering the settled judicial position in this regard, which have been decided in the three cases as enumerated above in Para 5."

10. Thus having observed that there was an apparent mistake in the intimations sent by Ld. AO u/s 154 and respectfully following the ratio of the above decision of Hon'ble ITAT, Jodhpur Bench, we are inclined to accept that the Ld. CIT(A) is not justified in dismissing the appeals of assessees. Therefore, Ground No. 1 is allowed."

Since, the issue has already been decided in favour of the assessee that the late fees u/s 234E of the Act could not have been levied in the intimation u/s 200A for delay in filing quarterly returns of TDS the said power to levy fees has come into effect from 01.06.2015. Considering that aspect of the case we are of the considered view that the levy of late fees in this case before the amendment came into existence is not correct. Therefore, we vacate the levy u/s 234E of the Act. Based on this observation the appeal filed by the assessee is allowed.

9. Since the appeal of the assessee in ITA No. 75/Jodh/2022 for the assessment year 2013-14 has been decided in favour of the assessee, therefore the decision taken therein shall also apply mutatis mutandis in the appeal of the assessee bearing ITA No. 76/Jodh/2022 on similar facts and circumstances of the case (supra). Hence, this appeal of the assessee is allowed.

In the result, the appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-	Sd/-
(RATHOD KAMLESH JAYANTBHAI)	(DR. S. SEETHALAKSHMI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated : 04/10/2023

Santosh
Copy to:
1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar
Jodhpur Bench