

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.2475 to 2480/Bang/2018
(Assessment Years : 2013-14 to 2015-16)

M/s. 3S Technologies & Automation Private Limited,
No.2, 100 ft Ring Road, BTM 2nd Stage,
Bangalore-560076
PAN: AAACZ4552D

....Appellant.

Vs.

Asst. Commissioner of Income Tax,
CPC, TDS, Ghaziabad.

.....Respondent.

Assessee By:	Shri Nitish Ranjan, C.A.
Revenue By:	Shri Manjeet Singh, Addl. CIT (D.R)

Date of Hearing :	10.03.2020
Date of Pronouncement :	13.03.2020

ORDER

PER BENCH :

These are the appeals filed by the assessee against separate orders of Commissioner of Income Tax (Appeals)-3, Bangalore passed under Section 200A and 250 of the Act. Since all these appeals have common and identical issues, they are clubbed and heard together and consolidated order is passed. For the sake of

convenience, we shall take up Appeal ITA No.2476/Bang/2018, where the CIT (Appeals) has not condoned the delay in filing the appeal.

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

1. The order of the Ld. Commissioner of Income Tax (Appeals) ("CIT(A)") is opposed to law, facts and circumstances of the case.
2. The order is passed in haste, without providing sufficient and reasonable opportunity of being heard.
3. The order is passed against the principle of natural justice and thus liable to be quashed.
4. On the facts and circumstances of the case and in law, the intimation of demand u/s. 200A of the Income Tax Act, 1961 ("Act") for late fee under section 234E of the Act is illegal, invalid and unenforceable in law.
5. The Ld. CIT(A) has grossly erred in upholding the stand of the Ld. ACIT in passing the intimation under section 200A of the Act by levying a fee of Rs. 72,230/- under section 234E of the Act for the Financial year 2012-13.
6. The Ld. CIT(A) failed to lay emphasis on the fact that the relevant provisions of section 200A(1)(c)(d) and (f) have come into force only with effect from 01.06.2015 and hence, there was no authority or jurisdiction on the part of the Ld. ACIT to compute and determine the fee under section 234E of the Act with respect to returns for the period prior to 01.06.2015.

7. The Ld. CIT(A) and Ld. ACIT has failed to note that the insertion of clause (c) to (f) of section 200A(1) of the Act is prospective in nature.
8. Without prejudice to the above, the Ld. CIT(A) and Ld. ACIT ought to have considered the fact that as per the provisions of Section 200A of the Act, intimation should be passed within one year from the end of the financial year in which the related TDS statement is filed.
9. Reliance is placed on the following decisions:
 - a. Jurisdictional Karnataka High Court in the case of **Shri. Fatheraj Singh and Others Vs. Union of India** reported in **289 CTR 602**
 - b. Hon'ble Income Tax Appellate Tribunal – Amritsar, in the case of **DCIT (TDS) Vs. Sibia Healthcare Private Limited**.
 - c. Hon'ble Income Tax Appellate Tribunal – Ahmedabad, in the case of **DCIT (TDS) Vs Smt Anisha Shirish Kumar (2016)**.

3. The Brief facts of the case are that the assessee is engaged in the business of property development, systems integration, distribution of advance electronic automation security, safety surveillance and Automation System Solutions and has filed the TDS Return under Section 200(3) of the Act in Form 26Q of F.Y. 2012-13 on 23.5.2013 and for Q 3 & Q 4 of F.Y. 2012-13 filed on 12.10.2013. The Income Tax Department after processing, has passed the order under Section 200A of the Act for Q2 on 25.10.2016 and for Q3 and Q4 on 17.10.2016 with late fees of Rs.1,24,610/-. The Assessee has filed an appeal against the order with the Cit(Appeals). The assessee was under bona fide belief that the levy of fees under Section 234E of the Act is not applicable and relied on the decision of the Hon'ble

High Court of Karnataka in the case of Sri Fatehraj Singhvi & Others Vs. Union of India 289 CTR 602 (Kar) where it has been held that provisions of Section 200A(1)(c), (d) and (f) of the Act are effective from 1.6.2015. Whereas the order under Section 200A of the Act passed in the present case pertains to period prior to 1.6.2015. The CIT (Appeals) in the appellate proceedings considered the explanations and was not satisfied on the submissions in filing the appeal and the condonation petition filed explaining the reasons by the assessee referred at Para 4.0 of the order and finally dismissed the appeal without condoning the delay. Aggrieved by the Cit (Appeals) order, the assessee has filed an appeal before the Tribunal. The LdAr emphasized that the provisions of Section 200A(1)(c),(d) and (f) of the Act have come into force only from 1.6.2015 and relied on the decision of jurisdictional High Court in the case of Sri Fatehraj Singhvi & Others Vs. Union of India (supra) on the levy of late fees under Section 234E of the Act. The assessee has filed an appeal against the order of the CIT(Appeals) for not deciding the appeal on merits and not condoning the delay without providing sufficient and reasonable opportunity of hearing and prayed for allowing the appeal. Contra LdDr supported the orders of Cit(Appeals).

4. We heard the rival contentions and perused the material on record and the condonation petition was filed by the assessee referred at Para 4.0 of the CIT(Appeals) order, we are of the opinion, that there exists a reasonable cause as

per the submissions made by the assessee before the appellate authority and the assessee shall not get any benefit from delaying the process of filling the appeal. We considering the facts and circumstances, find sufficient cause for delay in filing the appeal and relay on the decision of Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. M.S. Katiji & others (167 ITR 471) (SC) and the observations are read as under :

“ The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.”

Accordingly, we follow the ratio of the decision, and in the interest of substantial justice, condone the delay and set aside the order of CIT(Appeals) and restore the

entire disputed issues to the file of CIT(Appeals) to admit and adjudicate on merits afresh and pass a speaking order. The assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information for early disposal of the appeal and allow the grounds of appeal of assessee for statistical purposes.

5. Similarly, the assessee has filed appeals in ITA Nos.2475/Bang/2018 and 2477 to 2480/Bang/2018 for A.Ys 2013-14, 2014-15 and 2015-16 where the issues are similar and identical and the decision in ITA No.2476/Bang/2018 shall equally apply. Accordingly, we condone the delay in filling these appeals and set aside the orders of the CIT (Appeals) and restore the entire disputed issues to the file of CIT(Appeals) for adjudication on merits with similar directions and allow the grounds of appeals of assessee for statistical purposes.

6. In the result the assessee's appeals in ITA Nos.2475 to 2480/Bang/2018 are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 13.03.2020.

*Reddy GP

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| 1. The Appellant | 2. The Respondent |
| 3. CIT (Appeals) | 4. Prin. CIT |
| 5. DR, ITAT | 6. Guard File. |

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore