

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA Nos. 164,165 & 166/Del/2021
Asstt. Years: 2006-07, 2004-05 & 2005-06

Mass Awash Private Limited, 3-A, Oriental House, Gokhle Marg, Lucknow, Uttar Pradesh 226 001. PAN AAECM2560N	Vs.	Addl.CIT, International Taxation, Noida.
(Appellant)		(Respondent)

Assessee by:	None
Department by:	Shri Sanjay Kumar, Sr. DR
Date of Hearing:	25.04.2023
Date of pronouncement:	02.05.2023

ORDER

PER ASTHA CHANDRA, JM

The three appeals filed by the assessee are directed against the consolidated order of the Ld. Commissioner of Income Tax (Appeals)-2, Noida dated 27.03.2018 pertaining to the Assessment Years ("**AYs**") 2004-05, 2005-06 and 2006-07. Since the issues are common, all the three appeals were heard together and accordingly the same are being disposed of by this common order.

2. The assessee has raised the following grounds in all the three AYs:-

- “1. That the penalty imposed is bad in facts and legal aspects of the case.*
- 2. That penalty imposed is barred by time in terms of provisions of Section 275(1)(C).*
- 3. That the penalty order is bad in law because penalty order passed by the Additional Commissioner of Income Tax, International Taxation, Noida is said to have been passed on 28.03.2017 at Noida and on the same date i.e. 28.03.2017, the Deputy Commissioner of Income Tax, International Taxation Circle, Lucknow has issued the demand notice under Section 156 of the Income Tax Act.*
- 4. That when the appellant was having reasonable cause in not deducting TDS u/s 195 the penalty imposed is bad in law.*
- 5. That the appellant was not in the knowledge that Smt. Nidhi Ram Singh was an NRI and there were no circumstances to suggest to appellant that she was NRI hence there was reasonable cause with appellant in not deducting TDS in terms of section 195.*
- 6. That the order passed is against the merit, circumstances and legal aspects of the case.”*

3. The brief facts of the case are that the assessee purchased a plot of land for a sale consideration of Rs. 3,04,50,750/- on 14.06.2005. One of the co-sellers of the property Smt. Nidhi Raman was non resident Indian (NRI) who had 1/5th share in the property to the tune of Rs. 60,00,000/-. The assessee while making payment to Smt. Nidhi Raman failed to withhold tax under section 195 of the Income Tax Act, 1961 (**the “Act”**) being the payment made to a NRI. Consequently proceedings under section 201(1)/201(1A) of the Act were initiated against the assessee and an order under section 201(1)/201(1A) was passed by DCIT, International Taxation, Lucknow. Reference dated 25.04.2016 for imposition of penalty under section 271C(1)(a) of the Act was received by the Additional Commissioner of Income Tax (International Taxation), Noida from the Ld. Assessing Officer and notices dated 03.05.2016 and 29.08.2016 were issued wherein the assessee was required to show cause as to why penalty may not be imposed for failure to deduct tax under section 195 of the Act. The explanation offered by the assessee was not acceptable to the Ld. Addl. CIT, International Taxation, Noida who observed that there was no reasonable cause for failure to deduct TDS and that the assessee in its submission has also not raised any grounds or circumstance which might have led to the failure in

deduction of TDS. The assessee's explanation that none of the sellers were non resident and that the proceedings initiated under section 201(1)/201(1A) have become barred by limitation were also found to be not tenable. Accordingly, vide his order dated 28.03.2017 passed under section 271C(1)(a) the Ld. Addl. CIT imposed a total penalty of Rs. 12,36,000/- on account of assessee's failure to deduct as well as deposit TDS in to the Central Govt. account for AY 2004-05, 2005-06 and 2006-07 as indicated in the table below:

Financial Year	Amount Paid by the deductor to Smt Nidhi Raman	Non-deduction u/s 201(1) (Amt of TDS u/s 195)	Total Amount of non-deduction of TDS.	Amount of penalty to be levied u/s 271C(1)(a) of the I.T. Act.
	A	B	C	D
2003-04	1,97,400/-	20.6%	40,664/-	40,664/-
2004-05	9,85,200/-	20.6%	2,02,951/-	2,02,951/-
2005-06	48,17,400/-	20.6%	9,92,385/-	9,92,385/-
Total	60,00,000/-		12,36,000/-	12,36,000/-

4. Aggrieved, the assessee carried the matter before the Ld. CIT(A) who dismissed all the three appeals of the assessee for AY 2004-05, 2005-06 and 2006-07 by observing and recording his findings in para 4.2 to 4.11 of its appellate order as reproduced below:-

“4.2 I have considered the submission of the appellant, perused the penalty order and the order passed u/s 201(1)/201(1A) of the Act. The contention of the appellant is that under Section 275(1)(c) of the Act, no order imposing penalty can be passed after expiry or financial year in which the proceedings in the course of which action for the imposition of penalty has been initiated or, completed or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. It is submitted that in the present case, the relevant financial year expired on 31.03.2016 and six month period from the date of order i.e. 30.12.2015, expired on 30.06.2016.

Consequently, the present penalty order dated 28.03.2017 and the demand notice dated 28.03.2017 issued in furtherance thereof are barred by limitation and, as such, are not enforceable.

4.3 From the arguments of the appellant it is gathered that the appellant is considering the date of initiation of penalty proceedings u/s 271C of the Act from the date of passing the order u/s 201(1)/201(1A) of the Act. Penalty proceedings u/s 271C of the Act is an independent proceeding and is to be levied by Joint Commissioner of Income Tax on a reference received in this regard by the assessing officer passing the order u/s 201(1)/201(1A) of the Act. In the present case, the AO has passed the order u/s 201(1)/201(1A) on 30.12.2015. In the assessment order the AO has mentioned as "As the assessee had no basis of presumptions of non-taxability of the non-resident, penalty proceedings u/s 271C are initiated separately against the assessee for failure to deduct tax at source."

4.4 The AO is mere referring to the aspect of separate initiation of penalty u/s 271C of the Act. Penalty proceedings u/s 271C has to be initiated and levied by Joint Commissioner of Income tax on receiving a reference in this regard from the AO. The appellant has not disputed the fact that the reference in regard to initiation of penalty proceedings were received from the AO on 25.04.2016. On receiving such information, Joint Commissioner of Income Tax, International taxation initiated the penalty proceedings u/s 271C of the Act by issuing notice on 03.05.2016. For all purposes, this date i.e. 03.05.2016 is the date of initiating the penalty proceedings u/s 271C of the Act.

4.5 Provisions of section 275(1)(c) is as below:

"(c) in any other case, after the expiry of financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated are completed or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later."

4.6 There is no ambiguity in the above provision and it is evident the penalty can be levied up to 6 months from the date of initiation of penalty proceedings or till the last date of the financial year. In the present case, the notice for penalty proceedings u/s 271C was issued on 03.05.2016 i.e. in the financial year 2016-17 which ends on 31.03.2017. The impugned order was passed on 28.03.2017 i.e well within the time period prescribed to pass such penalty order. In view of the above discussion, it is held that the impugned penalty order passed on 28.03.2017 was passed within the time limit prescribed. Ground of appeal is dismissed on this issue.

4.7 On perusal of the assessment order u/s 201(1)/201(1A), it is gathered that the appellant was considered as assessee in default u/s 201(1)/201(1A) for non-deduction of tax u/s 195(1) of the Act. I have perused various orders in regard to jurisdiction of the officer over a class of person/assessee and of the opinion that of Dy. Commissioner of Income tax, International Taxation, Circle, Lucknow is the officer concerned having jurisdiction over the person responsible to deduct tax u/s 195 of the Act. Hence, it is held that the officer passing the orders u/s 201(1)/201(1A) and 271C of the Act is having jurisdiction over the appellant assessee to pass such orders. Ground of appeal also fails on this issue.

4.8 It is further gathered that notice u/s 271C(1)(a) was issued on 03.05.2016 & 29.08.2016. The appellant has received these notices and a submission dated 03.06.2016 was also filed before the assessing officer. In view of such facts, it is evident enough that the appellant was provided reasonable opportunity of being heard during the penalty proceedings. The submission made by the appellant during the penalty proceedings has been duly mentioned by the AO in the impugned order. In view of such facts, it is held that reasonable opportunity of being heard is provided to the appellant during the penalty proceedings. Ground of appeal on this issue is dismissed.

4.9 In regard to reasonable cause for not deducting TDS, the appellant only reiterates that the appellant was not in knowledge that Smt. Nidhi Ram Sing was an NRI. It is submitted that "That the appellant was not in knowledge that Smt. Nidhi Ram Sing was an NRI. There were no circumstances also to suggest that she was an NRI as the address etc. used in the purchase deed of the land were Indian. This was a reasonable cause for the appellant not to deduct TDS in terms of section 195. There was no deliberate default in not deducting TDS."

4.10 The statement made by the appellant is devoid of any substance. The appellant is engaged with the sell/purchase transaction of an immovable property. Before such deal is finalized there must be sufficient enquiry about the property and its owners. When the relevant owner is NRI, this fact should normally appear in the first stage of enquiries about the property & its owners. Transfer of funds, personal availability of NRI owner on the date of sale before the Registering Authority and other formalities to be completed at the time of sale deed registry require more diligence in the case when one of the person, buyer or seller, is an NRI. So, the submission of the appellant that it was not aware about the NRI status of the seller is without any substance. Hence, the appellant has failed to prove that there was reasonable cause for any failure to deduct u/s 195 of the Act.

4.11 *In view of the above discussion, the penalty levied for Rs. 40664/-, Rs. 2,02,951/- and Rs.9,92,385/- for A.Y. 2004-05, 2005-06 and 2006-07 respectively is confirmed.”*

5. Dissatisfied, the assessee came in appeal before the Tribunal challenging the order of the Ld. CIT(A) and all the grounds of appeal relate thereto.

6. The registry noticed that all the three captioned appeals filed by the assessee are late by 1005 days and even the appeal fee has not been paid under the correct minor head 300. However, the assessee filed an application dated 24.02.2021 on 26.02.2021 for condonation of the said delay in filing appeal. It is stated therein as under:-

“We had dispatched the appeal against CIT (A) order through DTDC Courier Service as on 7th May 2018 Vide R. No Z60601157 for all three Asstt Years. The Receipt of Courier is enclosed for your reference along with this application.

The appellant wanted to opt for Vivad Se Vishwas Scheme to end the litigation we enquired the Appeal no from office of Tribunal. We came to know that our appeals for three Asstt Years 2004-05 to Asstt Year 2006-07 had not been received by the Tribunal from the Courier till date.

Then we enquired the from the DTDC Courier service office. They could not figure out what happened of our courier even after taking time for more than a month.

We were in a bonafide belief that our appeals filed were delivered before Tribunal New Delhi well within time by the Courier service.

PRAYER

We request your honours to kindly condone delay for filing the appeal as there was no default from our side. The Appeals for the Asstt Year 2004-05 to 2006-07 are being again filed alongwith this condonation application as appellant wants to go under scheme Vivaad Se Vishwas Tak to end all the litigation.”

7. Record shows that before the Tribunal the hearing was fixed on 25.07.2022, 29.09.2022, 05.12.2022, 16.02.2023, 25.04.2023. None

attended for and / or on behalf of the assessee whereas the Ld. Sr. DR was present on all the above dates of hearing. We, therefore, proceed to decide the appeal ex-parte after hearing the Ld. Sr. DR. It is submitted by the Ld. Sr. DR that it is not a fit case for condoning the impugned delay in filing the appeal.

8. We have considered the submissions of the Ld. DR and perused the application for condonation of delay available in the records. It is observed that the assessee company has alleged that the inordinate delay in filing the appeal is attributable to the lapse on the part of the Courier Company, DTDC through which the assessee had dispatched the captioned appeals. The assessee has stated in its application that it is only when the assessee wanted to opt for Vivad se Vishwas Scheme, it enquired about the appeal No. from the office of the Tribunal and came to know that assessee's appeal for for all the AYs under consideration had not been received by the Tribunal from the courier till date. On inquiry from DTDC Courier Company, they could not find out anything regarding the non-delivery of courier to the Tribunal. It is stated in the application that the assessee was under bonafide belief that its appeals have been delivered to the Tribunal by the Courier Company. By way of evidence, the assessee has submitted receipt of courier.

9. It is apparently clear from the above facts stated by the assessee itself that the assessee did not make any efforts to pursue the appeals till it decided to settle these appeals under VSV Scheme to end the litigation. It was only after passing of more than nearly two and half years that the assessee realised that its appeals have not been filed before the Tribunal. In our humble view, the assessee could have at least enquired with the Tribunal after sending the appeals via courier on 07.05.2018 whether it has received them or not and taken the appeal nos. Instead, the assessee chose to sit silently under the guise of bonafide belief that the Tribunal would have received its courier and appeals would have been filed. It is, therefore not convincing that the delay was caused due to the reasons beyond the control of the assessee. Moreover, even after filing the application for condonation of

delay on 26.02.2021, none is appearing for / or on behalf of the assessee before the Tribunal on several dates fixed for hearing of the captioned appeals. The facts on record clearly indicate that delay was caused due to negligence, lethargy or inaction on the part of the assessee and therefore not worthy of condonation.

10. In *Sitaram Ramcharan vs. Nagarshana* (1960) 1 SCR 875 the Hon'ble Supreme Court observed at page 889 of the Report that it cannot be disputed that in dealing with the question of condoning delay under section 5 of the Limitation Act, the party has to satisfy the court that he had sufficient cause for not preferring the appeal within the prescribed time and this has always been understood to mean that the explanation has to cover the whole of the period of delay.

11. The Hon'ble Supreme Court in *Veda Bai alias Vaijayanta Bai Baburao Patil vs. Shantaram Baburao and ors.* 253 ITR 798 (SC) held that in exercising the discretion under section 5 of the Limitation Act the Court should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach and in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The court has to exercise its discretion on facts of each case keeping in mind that in construing the expression "sufficient cause" the principle of advancing substantial justice is of prime importance.

12. In *CIT vs. Shankarlal Ved Prakash (HUF)* 271 ITR 171 (Del) the Hon'ble Delhi High Court observed that in a case of apparent lethargy, the observation of Hon'ble Supreme Court in *State of Haryana vs. Chandramani* AIR 1996-SC-1623 that the expression "sufficient cause" should be considered with pragmatism could not be permitted to be used as a shield for inaction.

13. Having regard to the principle of law laid down in the decisions (supra) and in the facts and circumstances of the assessee's case, we decline to condone the inordinate delay of 1005 days in filing appeal before the Tribunal.

14. In para 7 above, we have enumerated the dates fixed for hearing of the appeals. Despite numerous opportunities provided to the assessee, the assessee chose not to avail them to rebut the findings of the Ld. AO/CIT(A). Resultantly, the findings of the Ld. AO/CIT(A) remain uncontroverted by the assessee before us.

15. For the reason aforesaid, the appeals of the assessee are dismissed as time barred and devoid of any merit.

16. In the result, the appeals of the assessee are dismissed.

Order pronounced in the open court on 2nd May, 2023.

**sd/-
(G.S. PANNU)
PRESIDENT**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 02/05/2023

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	

Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	