

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA Nos.  
1027, 1028 & 1014 to 1016/Del/2022  
Assessment Years: 2013-14, 2014-15 & 2017-18 to  
2019-20**

Medsave Health Insurance  
TPA Limited, F-701A, Lado  
Sarai, New Delhi.

**PAN: AABCS8148M**  
(Appellant)

Versus ACIT, CPC, TDS,  
Ghaziabad.

(Respondent)

Appellant by : None

Respondent by : Sh. Arvind Bansal, Ld. Sr. DR

Date of hearing: 15/03/2023

Date of order : 29/03/2023

**ORDER**

**PER N.K. CHOUDHRY, J.M.**

These appeals have been preferred by the Assessee, out of which the appeal pertaining to assessment year 2013-14 arises out of order dated 23.03.2022 whereas the appeals pertaining to A.Yrs. 2014-15 & 2017-18 to 2019-20 are directed against the consolidated order of even dated 23.03.2022, passed by the learned Commissioner of Income-tax (Appeals)-27, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act').

**2.** Since the common questions of law and facts are involved in all these appeals and the Assessee has raised common grounds therein, hence, the same were heard together and are being disposed of by this composite order for the sake of convenience and brevity.

**3.** The Assessee neither appeared nor filed any application for adjournment, despite sending notice for hearing at the address given by the Assessee in Form-36. Nor is there any other alternative address available with the Registry. Therefore, in the peculiar circumstances, we are constrained to decide these appeals as ex-parte qua Assessee.

**4.** For the sake of brevity, we will quote the facts, issues and impugned order involved in ITA no. 1027/Del/2022 for the assessment year 2014-15 as a lead case and our decision in this appeal shall apply *mutatis mutandis* to all other remaining appeals under consideration.

**5.** On merits, the Question involved in all these appeals for adjudication, is whether the Id. authorities below are justified in levying interest on late payment of TDS u/s. 201(1A) of the Act.

**6.** The brief facts relating to the issue under consideration are that the Assessee is a Third Party Administrator for insurance companies and made payments to various hospitals under cashless scheme on behalf of the insurance companies. The CPC-Bangalore vide intimation u/s. 154 read with section 200A of the Act charged interest on late payments of TDS u/s. 201(1A) of the Act.

Being aggrieved, the Assessee preferred first appeal before the Id. Commissioner, who vide impugned orders dismissed the appeal of the Assessee for A.Y. 2013-14 on merits and the appeals for A.Yrs. 2014-15 and 2017-18 to 2019-20 on merits as well as on limitation. For ready reference, the decision taken by the Id. Commissioner in the impugned order for the AY 2014-15, is being reproduced herein below:

**“6.** I have gone through the submission made by the appellant. Both the grounds of appeal pertains to single issue of charging of interest on late payment of TDS, therefore, both the grounds of appeal are taken together.

**6.1** The CBDT vide circular No. 8/2009 [F.NO. 385/08/2009-IT(B)], dated 24.11.2009 clarified as under:

*"3. The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194] are applicable on payments made by TPAs to hospitals etc. Further for invoking provisions of section 194], there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless schemes are liable to deduct tax at source under section 194] on all such payments to hospitals etc.*

*3.1 In view of above, all such past transactions between TPAs and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs] deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C."*

**6.2** The appellant company was one of the petitioners in Writ Petition (Civil), No. 121 of 2010 filed before the Hon'ble High Court of Delhi in January 2010 challenging the Circular No. 8/2009 issued by CBDT. The Hon'ble High Court of Delhi passed an interim order that: "in the meantime no

recovery shall be made pursuant to the Circular no 8/2009 dated 24.11.2009."

**6.3** The Hon'ble Delhi High Court vide final order dated 30.09.2011 in Writ Petition [Civil] No. 121 of 2010 held that: "It is held that Section 194J applies to the payments made by the petitioners to juristic or corporate entities that are "provide" "professional services"" Hence, it was settled on 30.09 2011 by Hon'ble Delhi High Court that provisions of section 194J of the Act are clearly applicable in TPA's case and TPA's are required to deduct TDS @ 10% on the payments made to hospitals on cashless basis on behalf of insurance companies.

**6.4** The section 194J of the Act reads as under:

*"194]. (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of—*

*(a) fees for professional services, or*

*(b) fees for technical services, [or]*

*[(ba) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or]*

*[(c) royalty, or*

*(d) any sum referred to in clause (va) of section 28]*

*shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per*

*cent of such sum as income-tax on income comprised therein”.*

**6.5** The tax deducted by the payer (i.e., a non-Government payer) is to be paid to the credit of the Government as follows:

- Tax deducted during the month of April to February should be paid to the credit of the Government on or before 7 days from the end of the month in which the deduction is made.
- Tax deducted during the month of March should be paid to the credit of the Government on or before 30th day of April.

**6.6** As per section 200A(1) of the Act:

*"200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

*(a) the sums deductible under this Chapter shall be computed after making the following adjustments namely; -*

*(i). any arithmetical error in the statement; or*

*(ii) an incorrect claim, apparent from any information in the statement;*

*(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;*

*(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;*

*(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;*

*(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and*

*(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:"*

**6.7** As per sub-section (1) to section 201 of the Act, a payer who fails to deduct whole or any part of the tax at source is treated as an assessee-in-default. However, the payer who fails to deduct the whole or any part of the tax on the payment made to a payee (whether resident or non-resident) shall not be deemed to be an assessee-in-default in respect of tax not deducted by him, if the following conditions are satisfied:

- The recipient has furnished his return of income under section 139,
- The recipient has taken into account the above income in its return of income.
- The recipient has paid the taxes due on the income declared in such return of income.
- The recipient furnishes a certificate to this effect from an accountant in Form No. 26A

In other words, in case of non deduction of tax at source or short deduction of tax, in case of a payee, if

all the discussed conditions are satisfied, then the payer will not be treated as an assessee-in-default. However, no such documentary evidence has been produced by the appellant which establish that the appellant company is not to be treated as assessee in default in view of conditions laid down in sub-section (1) of section 201 of the Act.

**6.8** Moreover, in such a case, even if the payer is not treated as an assessee-in- default, he will be liable to pay interest under section 201(1A) of the Act. As per sub-section (1A) to section 201 of the Act, if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay, the whole or any part of the tax to the credit of the Government, then, such person, shall be liable to pay simple interest as given below:

- Interest shall be levied at 1% for every month or part of a month on the amount of such tax from the date on which such tax was deducted.
- Interest shall be levied at 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax was actually remitted to the credit of the Government.

**6.9** The appellant has relied on the Hon'ble ITAT, Delhi's order for A.Y. 2012-13 in appellant's own case in I.TA No. 1916/Del/2016 dated 19.02.2018, wherein Hon'ble ITAT has ordered that file to be remanded to Assessing Officer to decide afresh after providing an opportunity of being heard to the appellant company. However, facts of case of present



case are different from facts of case of A.Y. 2012-13. The Hon'ble Delhi High Court's order dated 30.09.2011 was delivered during F.Y. 2011-12. Therefore, during F.Y. 2011-12 relevant to A.Y. 2012-13, for period from 01.04.20211 till 30.09.2011, the issue of deduction of TDS u/s 194) was not clear. After 30.09.2011, it was very well clear that TDS u/s 194J of the Act is to be deducted on payments made by TPA's to the hospitals under cashless scheme on behalf of insurance companies. In the case of A.Y. 2012-13, there was no clarity that transactions made by TPAs before 30.09,2011 i.e. before Hon'ble High Court's order are how to be treated. Therefore, the Hon'ble ITAT remanded back the matter to the Assessing Officer to decide afresh.

However, it is observed that case under consideration pertains to F.Y. 2013-14 relevant to A.Y. 2014-15. After the Hon'ble Delhi High Court's order dated 30.09.2011, the appellant company was very well clear that TDS u/s 194J of the Act at the rate of 10% is required to be deducted on the payments made during F.Y. 2013-14 & onwards and to be deposited to the Govt.'s A/c within prescribed time limits. However, the appellant company has failed to do so. Further, the appellant has contended that the intimation/ order has been processed by CPC-TDS in a mechanical manner without considering hardship and financial instability that the appellant company will go through. However, charging of interest u/s 201(1A) of the Act can not be questioned on the basis of financial hardship it will cause to the appellant and is consequential in nature. **Accordingly, in view of the above discussion, the grounds taken by the appellant are hereby dismissed."**

**7.** On perusal of the above findings of the Id. Commissioner, we observe that the Id. Commissioner while deciding the issue has taken into consideration the settled position of law on this aspect with reference to the provisions of sections 194J and Section 201(1A) of the Act in the light of CBDT Circular No.8/2009 dated 24.11.2009 and the decision of Hon'ble Delhi High Court, where the Assessee itself was one of the petitioners in Writ Petition(Civil) No. 121 of 2010, wherein it has been held that section 194J applies to the payments made by the petitioners to juristic or corporate entities that are providing professional services and the provisions of section 194J are clearly applicable in Third Party Administrator (TPA) cases. In fact, all the contentions of the Assessee raised before the Id. Commissioner have been properly considered by the first appellate authority in the impugned order and even otherwise we do not find any reason and/or material to contradict the decision made by the Id. Commissioner on the merits of the issue. Hence, the impugned order does not call for any interference on this count.

**8.** Adverting to the dismissal of appeals for A.Yrs. 2014-15 and 2017-18 to 2019-20 as barred by limitation by the Id. Commissioner, we observe that there was

huge delay in filling of these appeals before the Ld. Commissioner, which is detailed below:

A.Y.	Date of order	Date of appeal	Delay in filing of appeal
2014-15	27.02.2017	13.01.2021	3 years 10 months 17 days
2017-18	21.09.2017	13.01.2021	3 years 3 months 23 days
2018-19	18.11.2018	13.01.2021	2 years 1 month 26 days
2019-20	07.11.2019	13.01.2021	1 year 2 months 6 days

**8.1** The Assessee before the Id. Commissioner for condonation of delay claimed as under:-

*"In respect of above, it is submitted as under:*

*1. The CFO, Mr. P.K. Kaul of the company, left the services in 2015 and the juniors in the organization who were not experienced in handling the day to day affairs.*

*2. There was huge demand against the company in TRACES for various years upto financial years 2018-19 amounting to Rs. 28.17 crores. This was being actively pursued with the department to get same corrected including appeal effect and cases remanded back by Income Tax Appellate Tribunal-Delhi In all these cases the ground of appeal were the same ie. Interest on late payment of TDS. During the calendar year January to December 2020, the said demand has been reduced by Rs. 7.05 crores. This was done only when a writ petition was filed before the Hon'ble High Court of Delhi when the bank accounts were attached by the department in January 2020.*

*3. It is important to mention here that in various appeal filed some have been decided in our favour and others in favour of department by the*

*first appellate authority. However, on second appeal by the company or department, ITAT Delhi has remanded the cases back to the file of Assessing officer for fresh adjudication. In all these cases the grounds of appeal are the same i.e. interest on late payment of TDS.*

*For the captioned financial year, we have been pursuing with the department that intimations under section 200A should be rectified sue moto but the same has not been done.*

*5. Left with no choice we are filing this appeal with a request to condone the delay on the ground mentioned above."*

**8.2.** The Ld. Commissioner by considering the delay period and contentions of the Assessee, declined to condone the delay in filling of such appeals, by observing as under:

*" The orders u/s 154 r.w.s. 200A were passed by CPC-TDS, Bangalore, which gets served online automatically. The appeals have been filed much beyond the time limit of one month as provided u/s 249(2) of the Act. The appellant has cited the reasons leaving the company by CFO in year 2015 and pendency of huge demands in TDS-traces against the appellant company. After considering the submissions of the appellant, I am of the opinion that this delay appears to be on account of latches or gross negligence on the part of appellant company. Therefore,*

*prima facie appeal also appears to be barred by limitation of time, allowed for filing the appeal.”*

**8.3** We have given thoughtful consideration to the finding of the Ld. Commissioner in declining to condone the delay. In our considered view, once the Ld. Commissioner declined to condone the delay in filling of the appeal being time barred by limitation, then there is no need to go into merits of the case, vice versa, once the Ld. Commissioner decided the appeals on merits then the inference can be drawn that delay if any, in filling of appeal is condoned and the appeal is admitted. The Hon'ble Madras High Court in the case of Vijayeswari Textiles Ltd vs. CIT (2003)(131 Taxman 833) also dealt with an issue, where the Tribunal had refused to condone the delay, but disposed off the appeal on merits also. The Hon'ble Madras High Court held that if the appeal is adjudicated on merits, then refusing to condone the delay is an error. For ready reference, the concluding part of the judgement is reproduced below:

*“7. Matters relating to condonation of delay are indeed discretionary and are normally left to the Tribunal and this court will not ordinarily interfere with the discretion. In this case, as we have already pointed out, the Tribunal did not stop with the order*

*declining to condone the delay, but considered the matter on merits and has practically treated the appeal as being properly before it and has answered the question brought before it with reference to the material placed on record. It is in the circumstances, we hold that the Tribunal was in error in not condoning the delay. The question regarding the correctness of the Tribunal's holding that the delay is not to be condoned is therefore answered in favour of the Assessee and against the Revenue...."*

Coming to the instant case, as the Id. Commissioner first should have decided the issue qua condonation of delay in filling of the appeals and on satisfying that the Assessee has failed to establish sufficient cause for not filling the appeals within the prescribed period of limitation, the appeals should have been dismissed at the very threshold only on the point of limitation, whatsoever once the appeals decided on merit, then there was no need to go into the controversy qua limitation and to decline the condonation of delay, hence we are inclined not to approve such view, however as we have already dealt with the findings on merit of the case by the Id. Commissioner and therefore decision of the Id. Commissioner on merit is upheld.

9. In the result, all the appeals filed by the Assessee stands dismissed.

Order pronounced in the open court on 29 /03/2023

Sd/-

**(ANIL CHATURVEDI)**  
**ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)**  
**JUDICIAL MEMBER**

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant  
Registrar  
ITAT New Delhi

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