

4	4697/D/16	-do-	-do-	2014-15 Q-1	2013-14
5	4698/D/16	-do-	-do-	-do- Q-2	-do-
6	4699/D/16	-do-	-do-	-do- Q-3	-do-
7	4700/D/16	-do-	-do-	-do- Q-4	-do-
8	4701/D/16	-do-	-do-	-do- Q-4	-do-
9	4702/D/16	-do-	-do-	2015-16 Q-1	2014-15

2. Since the issue in all the appeals mentioned hereinabove is identical, therefore all the appeals are being taken up by this consolidated order. First of all we take up the appeal of the assessee in ITA No.4694/Del/2016 for the assessment year 2013-14 for the quarter 3 of Form 26Q i.e. Financial Year 2012-13. The order herein below for this quarter in ITA No.4694/Del/2016 shall be identically applicable in all other appeals except the quantum which shall be substituted according to the grounds of appeal in the respective appeal.

3. The grounds of appeal raised in ITA No.4694/Del/2016 are reproduced hereinbelow:

1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of the Ld. AO in imposing a sum of Rs.1,400/- u/s 234E on account of levy of late filing fee of TDS statement.
2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in imposing a sum of Rs.1,400/- on account of late filing fee and charging interest u/s 220(2) is bad in law and against the facts and circumstances of the case and without observing the principles of natural justice.
3. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.

4. The brief facts as stated by Id. Counsel for the assessee as available in the order of Id. CIT(A) are reproduced hereinbelow:

“Assessee filed its Form 26Q as per details given under

Form No.	Quarter	Date of filing of Form	Due date of filing	Delay in days	Fee imposed by AO
26Q	3	22.01.2013	15.01.2013	7	1,400.00
26Q	4	16.07.2013	15.05.2013	62	12,400.00
24Q	4	16.07.2013	15.05.2013	62	12,400.00

From the above your Hon'our will find that all the above TDS returns were filed before 01.06.2015 i.e. before the clause `€' inserted in section 200A of the Act which provide that fee, if any, shall be computed in accordance with the provisions of section 234E of the Act. It is not out of place to mention here that section 200A of the Act provides the procedure for processing of statements of tax deducted at source. Therefore, when the sub clause (c) in section 200A has been inserted with effect from 01.06.2015 only, the levy of fee under section 234E for any delay in filing the statement of TDS is contrary to law and therefore, the fee so imposed deserves to be deleted. Assessee rely on the various case laws referred to in the written submissions submitted, wherein various Hon'ble Courts have held that no fee u/s 234E can be charged before the date of insertion of clause `(c)' u/s 200A(1) of the Act.

That judgment dated 28.07.2015 of the Hon'ble High Court of Rajasthan in the case of `DundlodSikshanSansthan vs. Union of India'. In fact this judgment is on the constitutional validity of section 234E.

It is respectfully submitted that the above judgment was duly considered by the Hon'ble ITAT, Division Bench, Chandigarh, in their judgment dated 29.10.2015 in the case of M/s. Khanna Watches Ltd. Vs. The DCIT (CPC)-TDS. In this case also the issue was regarding "Levy of Fees under section 234 E". Facts of this case are similar to the facts of the assessee before your Hon'our. It is submitted that in the present appeals before your Hon'our tax was deposited in time and late filing was only on technical error

resulting in no loss to the revenue and such fee could have been recovered only at the time of filing return but not thereafter. Hon'ble ITAT considered the issue with regard to levy of fee prior to 1st June 2015, and after considering the judgments of the Hon'ble ITT Amritsar Bench in the case of Sibia Healthcare Pvt. Limited Vs DCIT (TDS) in ITA 90/2015, AND JUDGMENT OF THE Hon'ble ITAT Chandigarh Bench in the case of the Punjab State Co-operative Bank Employees Pension Fund Trust vs DCIT in ITA 728-730/2015 FOR ay 2014-15, deleted the fee levied u/s 234E of the Act. Hon'ble ITAT held that the decision of Bombay High Court in the case of RashmikantKundaliavs Union of India dated 6.2.2015 and decision of Rajasthan High Court in the case of M/s. DundlodShikshanSansthanvs UOI dated 28.7.2015 pertain to the issue of constitutional validity of Section 234E of the Income Tax Act in which constitutional validity of this provision was upheld. The issue in the present appeal have not been considered in these decisions, therefore, clearly distinguishable on facts and issue.

Hon'ble ITAT Amritsar Bench in the case of Sibia Healthcare Private Limited vs DCIT (TDS) in ITA No.90/2015, in para 8 of their judgment held that "there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E". Hon'ble ITAT further held in para 10 of their judgment that "the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A".

Reliance is also placed on the judgment of the Hon'ble Apex Court in the case of Commissioner of Income Tax (Central)-1, New Delhi vsVatika Township (P) Limited, 367 ITR 466 (SC).

In view of the above judgments, it is humbly prayed that since the issue in the present appeal before your Honour is also covered with the above judgments, the fee imposed by the Ld. O which is contrary to law and facts of the case, my kindly be directed to be deleted."

5. The Id. CIT(A) however rejected all the grounds of the assessee primarily holding as under:

" 5.5 However, the dispute has now been put to rest after the decision of **Hon'ble Rajasthan High Court in the case of M/s. DundlodShikshanSansthanvs Union of India** [2015] 63

taxmann.com 243 (Rajasthan). The Hon'ble Rajasthan High Court vide order dated 28 July, 2015 has followed the decision of High Court of Bombay in the case of RashmikantKundalia and upheld the constitutional validity of Section 234E and has also decided the issue of legality of orders passed under section 200A levying late filing fee u/s 234E prior to 1.6.2015. The relevant para is reproduced below:-

"8. In the present case, the fee was levied under section 200 for late filing of the returns, prior to the amendments made by the Finance Act, 2015 with effect from 1.6.2015 in Section 200A, 246A and 272A providing for computation and appeal. We do not find that even prior to these amendments the imposition of fee was illegal. We do not in exercise of the power under Article 226 of the Constitution of India find any valid reasons or justification to interfere with the compensatory fees imposed for late filing of the TDS returns on flat rates. The absence of any provision for condonation of delay and the appeal prior to amendments also did not make the imposition of late fees by Section 234E to be ultra vires."

5.6 The judgment of ITT Chandigarh Bench in the case of M/s. Khanna Watches Ltd. Vs the DCIT(CPC), TDS, relied upon by the appellant, also followed the ITAT Amritsar Bench in the case of Sibia Healthcare (P) Ltd., discussed supra. The Hon'ble Chandigarh Bench stated that the Rajasthan High Court in the case of DundlodShikshanSansthan and Bombay High Court in the case of RashmikantKundalia upheld the constitutional validity of section 234E and held that they had not considered the issue at hand. From the above discussion in para 5.5, regarding the judgment of the Rajasthan High Court, it can be clearly seen that a clear finding has been given by the Hon'ble Court that even prior to 01.06.2015 the imposition of fee u/s 234E was legal.

5.7 It is also worth mentioning that the fee u/s 234E is required to be mandatorily paid by the deductor at the time of submission of the TDS statement, calculated at the rate of Rupees two hundred per day for each day to delay beyond the due date prescribed for filing of the quarterly statement. There is no provision in the Act which allows for waiver from the payment of such fees. Any such condonation of delay or leniency would mean punishing the law

abiding deductors who had duly calculated the fees u/s 234E and paid the same. Non levy of the fee would mean punishing the honest and rewarding the guilty, which can never be the intention of the legislature.

5.8 In light of the above discussion and respectfully following the decision of the Hon'ble Rajasthan High Court in the case of **M/s. DundlodShikshanSansthanvs Union of India** the above grounds of appeal filed by the appellant are dismissed.

6. I have heard the rival contentions and perused the facts of the case. The only issue in all these appeals relates to the imposition of penalty u/s 234E made by Ld. AO on account of levy of late filing fees of TDS statement. While perusing the correctness of the intimation u/s 200A of the Act, one has to be guided by the limited mandate of the section 200A of the act which at the relevant point of the time, permitted computation of mount recoverable from or payable to, the tax deductor after making the adjustments. No other adjustments in the mount refundable to or recoverable from the tax deductor, permissible in accordance with law as it existed at that point in time. There was no provision for levying fees u/s 200A for period prior to 01.06.2015 and the same was subsequently inserted in section 200A(1)(c) with prospective effect from 01.06.2015 which is reproduced as under:

"the fees, if any, shall be computed in accordance with the provisions of section 234E."

Case of the assessee pertains to prior period before 01.06.2015, therefore, no fees can be levied u/s 234E of the Act, in view of the following judgments:

- FatherajSinghvi&Ors. Vs Union of India &Ors. (2016) 289 CTR 0602 (Kar): (2016) 142 DTR 0281 (Kar)
- Nirma Education & Research Foundation vs DCIT in ITA No.3141 & 3142/AHD/2014 Dated 31.03.2017

- Kash Realtors Pvt. Ltd. & ANR vs Income Tax Officer & ANR (2016)47 CCH 0523 Mum Trib
- Sibia Healthcare Private Limited vs DCIT (TDS) (Amritsar Bench) in ITA No.90/ASR/2015 Dated 09.06.2015.
- Khanna Watches Ltd vs DCIT (CPC/TDS) in ITA No.731 to 735/CHD/2015 Dated 29.10.2015
- Dhanlaxmi Developers vs DCIT (TDS) (Ghaziabad) in ITA No.2888 to 2891/AHD/2015 Dated 01.01.2016
- Globe Ecologistics Ltd. Vs DCIT (TDS) (Ghaziabad) in ITA No.2689 to 2695/AHD/2015 dated 26.11.2015

7. Ld. CIT(A) has relied on the decision of Hon'ble Rajasthan High Court in the case of M/s. Dundlod Shikshan Sansthan vs UOI 63 taxmann.com 243 on page 7 of the appellate order. In fact judgment pertains to constitutional validity of section 234E and same was considered by ITAT, Chandigarh bench in the case of Khanna Watches Ltd. Vs DCIT (CPC/TDS) in ITA No.731 to 735/CHD/2015 dated 29.10.2015 wherein it was held as under in para 10 of the decision:-

"10. The decisions relied upon by Id. DR pertain to the issue of constitutional validity of section 234E of the Income Tax Act in which constitutional validity of this provision was upheld. The issue in the present appeal have not been considered in these decisions, therefore, clearly distinguishable on facts and issue."

Thus, in view of our findings hereinabove and decisions relied upon the penalty imposed by A.O. u/s 234E is directed to be waived and accordingly grounds of the assessee and appeal are allowed.

8. Now we take up the appeals of the assessee in ITA No.4695/Del/2016 to 4702/Del/2016 as mentioned hereinabove. The issues in the present appeals are identical to the issues in ITA No.4694/Del/2016 decided hereinabove. My order in the appeal

no.4694/Del/2016 shall be identically applicable in other appeals i.e. ITA No.4695/Del/2016 to 4702/Del/2016. Accordingly all the appeals in ITA No.4695/Del/2016to 4702/Del/2016 are allowed.

8. In the result all the appeals of the assessee in ITA No.4694/Del/2016 to 4702/Del/2016 are allowed.

The Order is pronounced in the open court on 28.04.2017

Sd/-

(B.P. JAIN)
Accountant Member

Dated: 28.04.2017

PKK

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi