IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD 'D' BENCH, AHMEDABAD

[Coram: Pramod Kumar, AM and S.S. Godara, JM]

I.T.A. Nos.2509 to 2513/Ahd/2016
Assessment Years: 2015-16

Baroda Agro Chemicals Limited ***…….Appellant***
Survey No.40,
Yash Kamal Ind. Estate-VII,
Panelav, Halol ï 389 350 - Gujarat.
[PAN : AABCB 3964 C]

Vs.

Assist. Commissioner of Income Tax, CPC – TDS
Ghaziabad. ***…….Respondent***

Appearances by:

None *for the appellant*
V.K. Singh *for the respondent*

Date of concluding the hearing*:* *12.10.2017*
Date of pronouncing the order*:* *13.10.2017*

O R D E R

Per Bench:

1. By way of these 5 appeals, the assessee appellant has challenged correctness of the orders passed by the ld. CIT(A) confirming levy of fees, under section 234E of the Income Tax Act, 1961 (ôthe Actô hereinafter), on the assessees and by way of intimations issued under section 200A in respect of processing of TDS for the respective Assessment Years as indicated against each appeal.

2. In all these 5 appeals, the short grievance of the assessee is that on the facts and circumstances of the case, the ld. CIT(A) has erred in confirming the levy of late filing fees under section 234E in the course of processing TDS return under section 200A of the Act.

3. These appeals are time barred by 29 days. The assessee has moved condonation petition. We have heard the learned Departmental Representative on the same. We are of the considered view that the explanation given by the assessee was reasonable and deserves to be accepted. We, accordingly, condone the delay and proceed to take up the matter on merits.

4. None appeared on behalf of the assessee. We have heard the learned Departmental Representative, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

5. The period of delay in question is prior to 1st June 2015, i.e. prior to the period in which the relevant amendment in section 200A was made. On these facts, there is no dispute that the issue is squarely covered in favour of the assessee by the Division Bench decision of ITAT Amritsar Bench in the case of Sibia Healthcare Private Limited vs. DCIT - ITA No.90/Asr/2015, vide order dated 9th June, 2015, wherein the Division Bench has inter alia observed as under :-

> *"4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In addition to his argument on the merits, learned counsel has also invited our attention to the reports about the decisions of various Hon'ble High Courts, including Hon'ble Kerala High Court, in the case of Narath Mapila LP School Vs Union of India [WP (C) 31498/2013(J)], Hon'ble Karanataka High Court in the case of Adithya Bizor P Solutions Vs Union of India [WP No. 6918-6938/2014(T-IT), Hon'ble Rajasthan High Court in the case of Om Prakash Dhoot Vs Union of India [WP No. 1981 of 2014] and of Hon'ble Bombay High Court in the case of Rashmikant Kundalia Vs Union of India [WP No. 771 of 2014], granting stay on the demands raised in respect of fees under section 234E. The full text of these decisions were not produced before us. However, as admittedly there are no orders from the Hon'ble Courts above retraining us from our adjudication on merits in respect of the issues in this appeal, and as, in our humble understanding, this appeal requires adjudication on a very short legal issue, within a narrow compass of material facts, we are proceeding to dispose of this appeal on merits.*

5. We may produce, for ready reference, section 234E of the Act, which was inserted by the Finance Act 2012 and was brought into effect from 1st July 2012. This statutory provision is as follows:

234E. Fee for defaults in furnishing statements

(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to subsection (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.

6. We may also reproduce the Section 200A which was inserted by the Finance Act 2009 with effect from 1st April 2010. This statutory provision, as it stood at the relevant point of time, was as follows:

200A: Processing of statements of tax deducted at source

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

(d) 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 (c); and

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation : For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said subsection.

7. By way of Finance Act 2015, and with effect from 1st June 2015, there is an amendment in Section 200A and this amendment, as stated in the Finance Act 2015, is as follows:

In section 200A of the Income-tax Act, in sub-section (1), for clauses (c) to (e), the following clauses shall be substituted with effect from the 1st day of June, 2015, namely:—

"(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.

*8. In effect thus, post 1st June 2015, in the course of processing of a TDS statement and issuance of intimation under section 200A in respect thereof, an adjustment could also be made in respect of the "**fee, if any, shall be computed in accordance with the provisions of section 234E**". There is no dispute that what is impugned in appeal before us is the intimation under section 200A of the Act, as stated in so many words in the impugned intimation itself, and, as the law stood, prior to 1st June 2015, there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E. While examining the correctness of the intimation under section 200A, we have to be guided by the limited mandate of Section 200A, which, at the relevant point of time, permitted computation of amount recoverable from, or payable to, the tax deductor after making the following adjustments:*

(a). after making adjustment on account of "arithmetical errors" and "incorrect claims apparent from any information in the statement"

- Section 200A(1)(a)

(b). after making adjustment for 'interest, if any, computed on the basis of sums deductible as computed in the statement".

- ***Section 200A(1)(b)***

9. No other adjustments in the amount refundable to, or recoverable from, the tax deductor, were permissible in accordance with the law as it existed at that point of time.

10. In view of the above discussions, in our considered view, the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A. This intimation is an appealable order under section 246A(a), and, therefore, the CIT(A) ought to have examined legality of the adjustment made under this intimation in the light of the scope of the section 200A. Learned CIT(A) has not done so. He has justified the levy of fees on the basis of the provisions of Section 234E. That is not the issue here. The issue is whether such a levy could be effected in the course of intimation under section 200A. The answer is clearly in negative. No other provision enabling a demand in respect of this levy has been pointed out to us and it is thus an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected. As intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within 31st March 2015. That time has already elapsed and the defect is thus not curable even at

this stage. In view of these discussions, as also bearing in mind entirety of the case, the impugned levy of fees under section 234 E is unsustainable in law. We, therefore, uphold the grievance of the assessee and delete the impugned levy of fee under section 234E of the Act. The assessee gets the relief accordingly."

6. When the above judicial precedent was brought to the notice of the ld. Departmental Representative, he did not have much to say except to place his reliance on the orders of the authorities below.

7. In view of the above discussions and bearing in mind entirety of the case, we hereby delete the levy of late filing fees in all these 5 appeals under section 234E of the Act by way of impugned intimation issued. The assessees get the relief accordingly.

8. In the result, all these 5 appeals are allowed. Order pronounced in the open Court on this 13th day of October, 2017.

Sd/-	*Sd/-*
S.S. Godara	**Pramod Kumar**
(Judicial Member)	(Accountant Member)

Ahmedabad, the 13th day of October, 2017
*PBN/**
Copies to: *(1)* *The appellant*
(2) *The respondent*
(3) *Commissioner*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad