

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC/D' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC/D" BENCH, AHMEDABAD

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 2372 to 2374/Ahd/2016
निर्धारण वर्ष/Assessment Year: 2013-14 & 2014-15

Aaryavart Infrastructure Pvt Ltd FF, 174, Pariseema Complex, CG Road, Ahmedabad PAN : AADCA 4844 Q	Vs.	The Deputy Commissioner of Income-tax, CPC TDS, Ghaziabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Aseem Thakkar, AR
Revenue by :		Shri Prasoon Kabra, Sr DR

सुनवाई की तारीख/Date of Hearing : 26/10/2017
घोषणा की तारीख /Date of Pronouncement: 03/11/2017

आदेश/ORDER

PER MANISH BORAD, ACCOUNTANT MEMBER:

This bunch of appeals has been filed by the assessee against common order of the Learned Commissioner of Income Tax (Appeals)-8, Ahmedabad dated 18.07.2016 for Assessment Years 2013-14 and 2014-15. Since all these appeals belong to the same assessee and common issue was raised in all these three appeals; therefore, these were heard together and are being disposed of by this consolidated order for the sake of convenience. For the facility of reference, we take ITA No. 2372/ Ahd/2016 for AY 2014-15 as the lead case.

2. In ITA No.2372/ Ahd/2016, the assessee has raised following grounds:-

1. *The learned Commissioner of Income Tax (Appeals) has erred in dismissing the appeal for alleged late filing of appeal only on the basis of assumptions and presumptions and not accepting the reasons assigned hence the same should be cancelled.*

2. *The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Dy. Comm. of Income Tax, Centralized Processing Cell- TDS, Ghaziabad, U.P. in passing an order u/s.200A of the Income Tax Act, 1961 vide*

Comm. ref. No.TDS/1314/26Q/D/100009859352 in respect of Form No.26Q, filed by the Appellant for quarter - 1 of F.Yr.2013-14 which is illegal and bad in law. Hence the same should be cancelled.

3. The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Dy. Comm. of Income Tax, Centralized Processing Cell - TDS, Ghaziabad, U.P. in passing an intimation order u/s.200A of the IT. Act, 1961 without giving show cause notice to the appellant. Hence the order so passed without giving an opportunity of being heard to the appellant being against the principles of natural justice is illegal and bad in law.

4. The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Dy. Comm. of Income Tax, Centralized Processing Cell - TDS, Ghaziabad, U.P. in charging interest of Rs.34,570/- on alleged late Payment of TDS.

5. The learned Commissioner of Income Tax (Appeals) has erred in confirming the action of the Dy. Comm. of Income Tax, Centralized Processing Cell - TDS, Ghaziabad. U.P. in Charging Rs.65,400/- for the alleged late filing fees U/S.234E of the IT. Act, 1961.

3. At the time of hearing before us, at the outset, learned Counsel for the assessee submitted that the appeals filed before the Id. CIT(A) were summarily dismissed by him without dealing with the merits of the case as there was delay in filing the appeals before him. The learned Counsel further contended that there was a reasonable cause for such delay in filing the appeals before him as the communication, i.e. intimation u/s 200A of the Act, was sent through electronic media and the assessee came to know about the order only on 28.09.2015 and, therefore, the same date has been shown by him as date of service of order.

4. Having perused the reasoning put forward by the assessee as also bearing in mind entirety of the case, we are convinced that the assessee was prohibited by reasonable cause from filing the appeal within the

stipulated time before the Id. CIT(A) and the CIT(A) was not justified in summarily dismissing the appeal.

5. On merits of the case, learned Counsel for the assessee pointed out that similar issue arose before the Tribunal in the case of Wonder Waves Entertainment Pvt Ltd vs. DCIT in ITA Nos.2143 to 2146/Ahd/2015 for AY 2014-15, wherein the Tribunal, following the decision of ITAT, Amritsar Bench rendered in ITA No.90/Asr/2015 in the case of Sibia Healthcare Private Ltd vs. DCIT, has decided the similar issue in favour of the assessee, by observing as under:-

"6. We have duly considered the rival contentions and gone through the record carefully. We deem it pertinent to take note of the lucid enunciation of law and facts made by the ITAT, Amritsar while deleting the charging of late fee u/s. 234E of the Act. The findings reads 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 Bisor 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."

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7. *There is no disparity on facts, respectfully following the order of ITAT, Amritsar. We allow these all appeals and delete the late fee charged from the assessee u/s. 234E of the Act."*

6. Nothing contrary was brought to our knowledge on behalf of the Revenue. Facts being similar, so following the same reasoning and respectfully following the decisions of Co-ordinate Bench in the case of Wonder Waves Entertainment Pvt Ltd & Sibia Healthcare Private Limited (supra), we allow this ground raised by the assessee in all these appeals and delete the late fee charged from the assessee u/s 234E of the Act.

7. Regarding the ground raised by the assessee in respect of charging of interest, the learned Counsel for the assessee submitted that he is not pressing this ground; hence the same is dismissed as not pressed.

8. In the result, all appeals filed by the assessee are partly allowed.

Order pronounced in the Court on 3rd November 2017 at Ahmedabad.

Sd/-

(S.S. GODARA)
JUDICIAL MEMBER

Ahmedabad; Dated, 03/11/2017

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रोषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt.Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad