

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI , ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos.112 to 114 /CTK/2016**

Assessment Year: 2014-2015

M/s. JBS Capacitors Pvt Ltd., n-2/51/A, Rasulgarh, Mancheswar, Bhubaneswar.	Vs.	DCIT, Central Processing Cell_TDS, TDS CPC, Aayakar Bhavan, Sector-3, Vaishali, Gaziabad, U.P. 201010
PAN/GIR No.BBNJO 0048 G		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.C.Bhadra, AR  
Revenue by : Shri D.K.Pradhan, DR

**Date of Hearing : 25/10/ 2017**  
**Date of Pronouncement : 25 /10/ 2017**

**ORDER**

**Per N.S.Saini, AM**

These are appeals filed by the assessee against the separate orders of the CIT(A)-3, Bhubaneswar all dated 14.12.2015 for the financial year 2013-14.

2. The sole issue involved in these appeals is that the CIT(A) erred in confirming the order of the DCIT, Central Processing Cell-TDS, Gahjiabad levying late fee u/s.234E of the Income tax Act, 1961.

3. At the outset, Id A.R. of the assessee had filed adjournment petition seeking adjournment of the hearing on the ground that the Id A.Rs are pre-occupied for finalisation of tax audit reports and filing of income tax

return, the last date for which is 31<sup>st</sup> October and it is not convenient to attend the hearing.

4. The reason for seeking adjournment of hearing filed by the assessee was not found to be plausible one and, therefore, same was rejected and Bench proceeded to hear the appeals.

5. Ld A.R. of the assessee Shri S.C.Bhadra submitted that in view of the decision of Hon'ble Karnataka High Court in the case of Fatehraj Singhvi v. Union of India (289 CTR 0602), late fee can be charged only after 1.6.2015 and not for the period prior to that and requested that the issue may be decided accordingly.

6. Ld D.R. agreed with the above submission of Id A.R. of the assessee.

7. We find that this issue is no longer res-integra and this Bench of the Tribunal in the case of Gyanaranjan Ray vs ITO (TDS), Cuttack in ITA Nos. 314 to 316/CTC/2014 for assessment year 2013-14 and ITA No.317 to 318/CTCK./2016 for assessment year 2014-15, order dated 15.2.2017 has held as under:

"5. We have heard both parties and perused the records. We find that the only issue permeating from all the 5 appeals is regarding imposition of levy of fee for late filing TDS return u/s 234E of the Act, while processing the statements furnished by the assessee u/s 200A of the Act. At the outset itself, it was pointed out by the Ld. Counsel for the assessee that this issue is no longer *res integra* since the Hon'ble Karnataka High Court in Fatehraj Singhvi v. Union of India (289 CTR 0602) has held that w.e.f. 01.06.2015, the Parliament by way of an amendment to Section 200A of the Act, has empowered the AO to levy fee u/s 234E of the Act while processing u/s 200A of the Act. Therefore, prior to that date i.e.

1.6.2015, the AO had no authority to levy fee u/s 234E of the Act. Therefore, according to the contention of the Ld. Counsel for the assessee, that the AO erred in levying the fee u/s 234E of the Act which been wrongly confirmed by the Ld. CIT(A) and, therefore, the impugned orders of the Ld. CIT(A) need to be deleted.

6. On the other hand, the Ld. CIT(DR) contended that the Punjab and Haryana High Court in *Dr. Amrit Lai Mangal vs. Union of India* 62 [taxmann.com](http://taxmann.com) 310 (Punjab & Haryana) has taken a view which is in favour of the Revenue. On a query from the bench as to whether the jurisdictional High Court i.e. Hon'ble Orissa High Court has passed any orders in respect to the *LIS* before us. The Ld. DR fairly conceded that there is no order of the Hon'ble Orissa High Court on the issue in hand before us. It is well settled that when there is no order of the Jurisdictional High Court on the issue before us, the Tribunal will follow the order of the High Court which is in favour of the assessee (*CIT vs. Vegetable Products Ltd.* 88 ITR 192 (SC)). In such a scenario, we are inclined to follow the order of the Karnataka High Court which has been brought to our knowledge by the Ld. Counsel for the assessee.

7. The facts in *Fatehraj Singh vs. Union of India* (supra), which was decided by the Hon'ble Karnataka High Court was that for financial year 2012-13 and 2013-14, TDS was deducted by the respective assessee and deposited in the Government account. However, as per the Department, there was delay in filing the return/statement with the details of the persons from whom the TDS was deducted including the details and the persons concerned and the transactions etc. The Department issued intimation u/s 200A of the Act, calling upon the respective assessee to pay late filing fee u/s 234E of the Act in purported exercise of the power u/s 200A of the Act. The assessee challenged the levy of the fee and also the vires of the statute (Section 234E). The Hon'ble High Court did not make any finding in respect of the vires of the statute and the said issue was left open. However, the Hon'ble High Court held that prior to 01.06.2015, the AO while issuing intimation u/s 200A does not have the authority under law, to make any order u/s 234E of the Act and was pleased to delete the order of levy of late fee u/s 234E of the Act. The Hon'ble High Court held as follows in para 22 to 24 which is reproduced as under:

22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the

aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent."

8. We take note that the facts of the aforesaid case and the facts before us are similar. Only after 01.06.2015, the AO can levy fee under section 234E of the Act while processing the statement under section 200A of the Act and not before. Therefore, respectfully relying the order of the Hon'ble Karnataka High Court, the impugned intimation of the lower authorities levying fee under section 234E of the Act cannot be sustained in law. Accordingly the intimation under section 200A as confirmed by the Ld. CIT(A) in so far as levy of fee under section 234E is set aside and fee levied u/s 243E in all the appeals are ordered to be deleted. However, the other adjustments made by the AO in the impugned intimation shall stand as such. "

8. In the present appeals before us the financial year involved is 2013-14 and DCIT has levied late fee u/s.234E/200A of the Act for the first quarter of financial year 2013-14 at Rs.25,500/-, for the second quarter of financial year 2013-14 at Rs.25,500/- and for the 3<sup>rd</sup> quarter of financial year at Rs.11,600/-. As per the above quoted decision of this Bench of the Tribunal, the late fee is chargeable w.e.f. 1.6.2015. Therefore, the provisions of section 234E are applicable in the financial

year under consideration. Therefore, respectfully following the decision of this Tribunal, quoted above, we delete the levy of late fee u/s. 234E of Rs.25,500/- for the first quarter, R.25,500/- for the second quarter and Rs.11,600/- for the 3<sup>rd</sup> quarter of the financial year 2013-14 and allow the appeals of the assessee.

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

Order pronounced in the open court on 25/10/2017.

Sd/-  
**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

sd/-  
**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 25 /10/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The appellant: M/s. JBS Capacitors Pvt Ltd.,  
n-2/51/A, Rasulgarh, Mancheswar,  
Bhubaneswar.
2. The Respondent. DCIT, Central Processing  
Cell\_TDS, TDS CPC, Aayakar Bhavan,  
Sector-3, Vaishali, Gaziabad, U.P. 201010
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT- BBSR/CIT (TDS), BBSR
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
**ITAT, Cuttack**