



**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.329 to 332/CTK/2016
Assessment Years : 2013-14 and 2014-15

Spectra Vision, Plot No.235, Bapuji Nagar, Bhubaneswar	Vs.	DCIT, Centralised Processing Cell-TDS, Ghaziabad, U.P.
PAN/GIR No.BBNMO 0413 A		
(Appellant)	..	(Respondent)

Assessee by : None
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 31/10/ 2017
Date of Pronouncement : 31 /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 3rd May, 2016 for the 2nd, 3rd and 4th quarter of financial year 2012-13 and 1st and 2nd quarter of financial year 2013-14.

2. The common 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. None appeared on behalf of the assessee. However, an adjournment petition was filed for adjournment of the hearing on the ground that the A.R. is otherwise busy due to preoccupied professional



engagement and is out of head-quarter. The reason for seeking adjournment of hearing filed by the assessee was not found to be plausible one and, therefore, the adjournment was rejected. The Bench was of the view that these appeals can be disposed off in the absence of the assessee. Therefore, the appeals were heard *ex parte* qua the assessee and disposed off considering the submission of the Id D.R. and the materials available on record.

5. Ld D.R. submitted that the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi v. Union of India (289 CTR 0602) has held that late fee can be charged only after 1.6.2015 and not for the period prior to that. He submitted that the financial years involved in these appeals are Financial Year 2012-13 and 2013-14 and hence no late fee is chargeable and the appeals of the assessee are to be allowed.

6. 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 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 assesseees 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 assesseees 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 243E 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. "

9. In the appeals before us, the financial year involved is 2013-14. Therefore, respectfully following the precedent, we set aside the orders of lower authorities and delete the levy of fee u/s.234 E of the Act in all the quarters and allow the appeals filed by the assessee.

7. In the present appeals before us the financial years involved are 2012-13 and 2013-14 and DCIT has levied late fee u/s.234E/200A of the Act for the 2nd quarter of financial year 2012-13 at Rs.49,200/-, for the third quarter of financial year 2012-13 at Rs.30,800/- and for the 4th quarter of financial year 2012-13 at Rs.6,800/-/-. Similarly, the DCIT has levied late fee u/s.234E/200A of the Act for the 1st quarter of financial year 2013-14 of Rs.6,600/- and for the 2nd quarter of financial year 2013-14 of Rs.12,400/-. 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 not applicable in the financial years under consideration. Therefore, respectfully following the decision of this Tribunal, quoted above, we delete the levy of late fee u/s. 234E for the 2nd quarter of financial year 2012-13 at Rs.49,200/-, for the third quarter of financial year 2012-13 at Rs.30,800/-, for the 4th quarter of financial year 2012-13 at Rs.6,800/-/- for the 1st quarter of financial year



2012-13 of Rs.6,600/- and for the 2nd quarter of financial year 2-13-14 of Rs.12,400/- and allow the appeals of the assessee.

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

Order pronounced on 31/10/2017.

Sd/-

sd/-

(Pavan Kumar Gadale)
JUDICIALMEMBER

(N.S Saini)
ACCOUNTANT MEMBER

Cuttack; Dated 31 /10/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Spectra Vision, Plot No.235,
Bapuji Nagar, Bhubaneswar
2. The Respondent. DCIT, Centralised
Processing Cell-TDS, Ghaziabad, U.P
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttackw