आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, AHMEDABAD

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER & SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3091/Ahd/2015

(**निर्धारण वर्ष /** Assessment Year : 2014-15)

Vipul Forms & Graphics Pvt.Ltd. 26, Rajsukh Complex Lotus Flats Lane Opp. Gujarat Vidyapith Ahmedabad-380 009	**बनाम**/ Vs.	The DCIT CPC, TDS Ghaziabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHMV 02632 A		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Appellant by** :	Shri P.M. Mehta with Shri G.M. Thakor, ARs
प्रत्यर्थी की ओर से/**Respondent by** :	Shri Prasoon Kabra, Sr.DR

सुनवाई की तारीख / **Date of Hearing**	12/12/2017
घोषणा की तारीख /**Date of Pronouncement**	13/ 12 /2017

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax(Appeals)-8, Ahmedabad [CIT(A) in short] dated 02/09/2015 arising in the intimation passed under s.200A of the Income Tax Act, 1961 (hereinafter

referred to as "the Act") dated 02/09/2015 for quarter-4 of the Financial Year (FY) 2013-14 relevant to Assessment Year (AY) 2014-15.

2. The only ground raised in the present appeal relates to fee charged under s.234-E for belated filing of TDS return.

3. When the matter was called for hearing, the Ld.AR for the assessee submitted that the Revenue has imposed late filing fees under s.234E of the Act amounting to Rs.17,000/- for belated filing of Quarter - 4 return in prescribed form No.26Q for the FY 2013-14 relevant to AY 2014-15.

4. The Ld.AR on facts submitted that the intimation under s.200A to the assessee notifying late filing fee under s.234-E dated 03/09/2014 suggests that the issue relates to the period prior to 01/06/2015. The Ld.AR accordingly submitted that the default in furnishing TDS statement prior to 01/06/2015 do not give rise to late filing fee under s.234-E in view of the limited mandate of section 200A at the relevant time. The Ld.AR submitted that the issue is no longer *res integra* and decided in favour of assessee by plethora of tribunal decisions in respect of cases prior to 01/06/2015. The Ld.AR relied upon the decision of the Tribunal in the case of Wonder Waves Entertainment Pvt.Ltd. vs. DCIT,

CPC, TDS-Ghaziabad in ITA Nos.2143 to 2146/Ahd/2015 for AY 2014-15, order dated 14/10/2015.

5. The Ld.DR relied upon the order of the CIT(A).

6. We have carefully considered the rival submissions. We find that the correctness of charge of late fee under s.234E has duly been examined in various judicial precedents. It will be apt to reproduce the operative para of the order of the Tribunal in the case of Wonder Waves Entertainment Pvt.Ltd.(supra) which is squarely applicable to the facts of the case.

> *"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 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."

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."

7. In view of the parity of the facts, we respectfully follow the decision of the Coordinate Bench and direct the Assessing Officer (AO) to delete the late filing fees imposed under s.234-E of the Act.

8. In the result, appeal of the assessee is allowed.

This Order pronounced in Open Court on 13 / 12 /2017

Sd/-	Sd/-
(एस.एस.गोदारा)	(प्रदीप कुमार केडिया)
न्यायिक सदस्य	लेखा सदस्य
(S.S. GODARA)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 13/ 12 /2017

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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)—8
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad