

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1463 & 1663/Chd/2017

Assessment Year: 2016-17

Principal Rajiv Gandhi Govt.
Ayurvedic College, Paprola
Kangra

Vs. The ACIT
CPC, TDS
Ghaziabad (ITO, TDS)
Palampur

PAN No. PTLR11800F

(Appellant)

(Respondent)

Assessee By	:	Sh. S.S. Guleria
Revenue By	:	Sh. Manjit Singh
Date of hearing	:	21/02/2018
Date of Pronouncement	:	11/05/2018

ORDER

PER ANNAPURNA GUPTA, A.M.

Both the above appeals have been filed by the Assessee against separate orders passed, in appeal against intimations made u/s 200A of the Income Tax Act,1961 (hereinafter referred to as" Act"), by the Ld. CIT(A), Palampur(H.P.)

2. The issue raised in both the above appeals are common, relating to charging of fees under section 234E of the Act on account of late filing of TDS returns . Therefore both the appeals were heard together and are being disposed off by way of this common order.

3. For the sake of convenience we shall be dealing with the appeal of the assessee in ITA No. 1463/Chd/2017. The ground raised by the assessee reads as under:

1. That the order of the Ld. CIT(A) is against the facts and law upholding the charging of the fee of Rs. 63600/- charged u/sec 234 E.

2. That the tax has been deducted and deposited in to the Central Government account well in time and there is no loss of revenue.

3. *That the return was handed over to the franchise well in time and the delay if any, occurred on their part.*

4. *That the appellant may not be penalized for failure on the part of franchise to whom the statements were handed over well in time .*

5. *That the default is purely venial and technical in nature.*

6. *That the Ld. AO did not afford an opportunity of being heard and thus the fee charged is violation of the principles of natural justice .*

7. That the appellant was not aware of the amended provisions of section 200 A of the Income Tax Act 1961 which come in to effect from 01-06-2015

4. Briefly stated the TDS statement for F.Y. 2015-16, Q1, Form No. 24Q filed by the assessee on 13/06/2016 was processed under section 200A of the Income tax Act, 1961 and adjustment made on account of fees for late filing of the said returns, as per the provisions of Section 234E of the Act, amounting to Rs. 63,600/- vide intimation dt. 16/06/2016.

5. Aggrieved by the same the assessee filed appeal before the Ld. CIT(A).

6. Before the Ld. CIT(A) the assessee contended that the delay in the statement of the TDS return was not on account of any fault of the assessee but was attributable to the advocate who was engaged by the assessee for filing the TDS return, who failed to submit the TDS return on time. The assessee filed copy of the dispatch register of the college showing correspondence with regard to the impugned TDS return in Form No. 24Q sent in time to the advocate. The assessee also contended that the AO did not afford an opportunity of hearing before levying the late fees under section 234E and thus violated the principles of natural justice. The Ld. CIT(A) dismissed the contention of the assessee and upheld the levy of fees stating that the fact of there being delay in the filing of return being undisputed and the levy of fees being statutory, mandatory, and consequential, the AO had rightly levied the fees in the present case. The relevant findings of the Ld. CIT(A) in this regard at para 5 of his order is as under:

5. I have considered the facts of the case and submissions of the appellant. The plea of the appellant that it had dispatched a communication to the advocate does not help the case of the appellant. The due date for uploading the 24Q TDS statement for Q-I was 31.07.2015 and the said communication is claimed to have been sent to the advocate on 30.07.2015. This apart, there is no evidence of actual dispatch by post or other-wise of the said communication. The facts of the

case law relied upon by the appellant, i.e., Sahara India Vs CIT, are also distinguishable as in this case, Hon'ble Court held that special audit u/s 142(2A) requires issue of show-cause notice.

In the present case, late filing fee u/s 234E for Quarter 1 of F.Y. 2015-16, form 24Q, has been levied while processing the TDS statement u/s 200A of the Act on 16.6.2016. Section 200A of the Act titled "Processing of statements of tax deduction at source" was inserted by Finance Act, 2009 w.e.f. 01.04.2010. Section 234E of the Act titled "Fee for default in furnishing statements" was inserted by the Finance Act 2012 w.e.f. 1.07.2012. Clause (c) for charging fee u/s 234E as part of the adjustments has been inserted in section 200A(1) by Finance Act 2015 w.e.f. 01-06-2015. The late filing fee u/s 234E has been levied in the present case after 1.6.2015 and was very much within the scope of permissible adjustments contemplated u/s 200A.

The levy u/s 234E is statutory, mandatory and consequential to the processing of the TDS statement u/s 200A of the Act. No opportunity of hearing is required to be given before processing of the e-TDS return u/s 200A of the I.T. Act. The appellant has not disputed the fact that the statement has been filed late nor contested the period of delay. Upon due consideration of the matter, it is held that the fee u/s 234E has been rightly levied and is accordingly upheld.

7. Before us the Ld. Counsel for the assessee reiterated the contention made before the Ld. CIT(A).
8. Ld. DR on the other hand relied on the order of the Ld. CIT(A).
9. Having heard the contention of both the parties we find no merit in the present appeal. The fact that TDS return was filed late is not disputed. Section 234E which charges fees for late filing of return reads as under:

234E. Fee for default 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 sub-section (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."

A bare reading of the same reveals that it is a charge and not a levy since it is to be paid suo moto by persons in default before delivering the statement of TDS return as per the provisions of section 200(3) of the Act, meaning thereby that it is mandatory. This is also evident from the language of section 200A, which

deals with processing of TDS returns ,allowing" adjustment" to be made on account of fees for late filing of TDS returns as per the provisions of section 234E and not "levying" the same. For a better understanding ,section 200A is reproduced hereunder:

"200A. Processing of statements of tax deducted at source.—

(1) Where a statement of tax deduction at source 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 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 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;

(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 :

As is evident from a bare reading of the above , u/s 200A the TDS returns are only processed and corrections/adjustments made of apparent and glaring errors ,whether mathematical errors or apparently incorrect claims and also includes adjustment on account of fees u/s 234E. It is a summary scrutiny of TDS returns allowing only apparent adjustments to be made.By permitting fees charged u/s 234E to be adjusted ,it implies that the same is a mandatory charge.

Therefore no question arises of confronting the assessee before collecting the said fees or for that matter not charging it on reasonable cause being demonstrated by the person in default. Being a charge and not a levy there is no discretion with the authority making adjustment on account of the same while processing the TDS return u/s 200A of the Act. Further the Ld. Counsel for the assessee has not brought to our notice any provisions under the Act which provides for no fees to be charged in case reasonable cause for delay in filing

the TDS return is demonstrated by the assessee on the lines of section 273 B of the Act which so provides in the case of penalties levied.

The Ld. CIT(A) therefore we hold has rightly stated that the levy of fees is mandatory, statutory, and consequential to the processing of TDS statement, therefore, no opportunity of hearing is required to be given before processing of e-TDS return. In view of the above we uphold the order of the Ld. CIT(A) and dismiss the appeal filed by the assessee.

10. It was common ground that the facts and issue in ITA No. 1663/Chd/2017 were identical to that in ITA No. 1463/Chd/2017. Therefore our decision rendered in ITA No. 1463/Chd/2017 above, will apply to the appeal of the assessee in ITA No. 1663/Chd/2017 also, following which the appeal in ITA No. 1663/Chd/2017 is also dismissed.

11. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER
Dated : 11/05/2018
AG

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR