

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1906/Hyd/2017
Assessment Year: 2013-14**

V- Secure Financial Services Pvt. Ltd., Hyderabad. vs. Income-tax Officer,
Ward – 17(4), Hyderabad.

PAN – AADCV 2054R

(Appellant)

(Respondent)

Assessee by : Shri T. Rajendra Prasad
Revenue by : Smt. N. Swapna

Date of hearing : 08/05/2018
Date of pronouncement : 23/05/2018

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This appeal filed by the assessee is directed against the order dated 31/08/2017 of CIT(A) – 8, Hyderabad for AY 2013-14.

2. In this case, the order u/s 200A was passed on 09/12/2013 and the appeal was filed by the assessee on 08/01/2014 with a delay of 1142 days before the CIT(A).

3. Before the CIT(A), assessee submitted that it was under the impression that there is no legal remedy of appeal u/s 246A against the impugned order passed u/s 200A. It was also submitted that assessee was prevented from filing the appeal within the time as there was no provision in section 246A of the Act. However, it was submitted that the assessee came to know from a number of similar cases that a provision was added in section 246A with effect from

01/06/2015 and the appeal is maintainable from then onwards and against the order passed u/s 200A.

4. After considering the above submissions, Id. CIT(A) brought on record that order u/s 200A(1) was always appealable order as per the provisions of section 246(1)(a) and observed that relevant portion of this clause was substituted by some other clauses by the Finance Act, 2015 with effect from 01/06/2015. It did not have any bearing on the appealability of the order u/s 200A(1)(c) wherein levy of late fee u/s 234E was made. By rejecting the argument of the assessee, Id. CIT(A) dismissed appeal filed by the assessee with a huge delay of 1142 days.

5. Aggrieved with the above order, assessee preferred appeal before us by raising the following grounds of appeal:

"1. The CIT appeals has erred in law and facts of the case in dismissing the case merely on the grounds of limitation rather than on the basis of merits

2. CIT Appeals erred in confirming the order of the DCIT CPS TDS GHAZIABAD whereby fee under section 234E was levied for the periods prior to 1st June 2015 through an intimation under section 200A J even though section 200A was amended with effective from 1st June 2015 containing a reference to section 234E"

6. Considered the rival submissions and perused the material on record. We find that no doubt there is a delay on the part of the assessee in furnishing the required statements/information as per the TDS provisions, and accordingly, the late filing fee u/s 234E was levied on the assessee. The intimation u/s 200A of the Act, dated 09/12/2013 was accordingly passed and served on the assessee. The assessee filed an appeal against this intimation on 23/02/2017 resulting in delay of 1142 days in filing appeal before the First Appellate Authority and the reasons for such delay that such an order was not appealable at that point of time as submitted by the assessee

are not sustainable as the orders passed u/s 200A were appealable orders as per the provisions of section 246A. However, the assessee has now brought to our notice the decision of Hon'ble Karnataka High Court in the case of Sri Fatheraj Singhvi and others in W.P. Nos. 2663-2674/2015(T-IT) & others, dated 26/08/2016 in which, the Hon'ble Court considered the question as to whether there was mechanism provided u/s 200A prior to 01/06/2015 to demand the fee u/s 234E of the Act and after considering the various aspects of the issue has held that the substitution of clauses (c) to (f) of Sub-section (1) of section 200A can be read as having prospective effect and not retrospective effect. The relevant observations are reproduced hereunder for ready reference:

"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory <http://www.itatonline.org> 26 mechanism or confers substantive power upon the authority would also be an aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective."

6.1 Considering the above decision, in our view, assessee has a favourable case in its favour. In this appeal, we have to adjudicate whether the CIT(A) was right in refusing to condone the delay of 1142 days in filing of the appeal before him. For condonation of delay, the

assessee has explained 'sufficient cause' and various Courts have held that the expression 'sufficient cause' ought to be interpreted in a manner which subserves a cause of justice for which the institutions of justice stand for. When a case with arguable points is shut on presumptions of limitation, it results in throwing out a good case at the threshold with only a necessary implication of justice being propagated and justice being denied. In the case of Collector Land Acquisition, Anantnag Vs. Mst. Katiji [1987] SCC 107, the Hon'ble Supreme Court observed that the legislature has conferred the powers to condone delay by enacting Section 5 of the Indian Limitation Act of 1963, in order to enable courts to do substantial justice to parties by disposing of matters on "Merits" and that the expression 'sufficient cause' employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of courts. Respectfully following the above judgment, we are of the opinion that the delay in filing of appeal before Id. CIT(A) is be condoned in the interest of justice. Accordingly, we remit this file back to the file of CIT(A) with a direction to condone the delay and consider the issue on merits in accordance with law and after providing reasonable opportunity of being heard to the assessee.

7. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Pronounced in the open Court on 23rd May, 2018.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 23rd May, 2018

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Copy to:-

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- 2) *ITO, Ward – 17(4), Signature Towers, Opp. Botanical Gardens, Kondapur, Hyderabad – 84.*
- 3) *CIT(A) – 8, Hyderabad.*
- 4) *CIT (TDS), Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) Guard File