

**आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

**BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 4822/Mum/2016

(निर्धारण वर्ष / Assessment Year 2013-14)

Ravi Rajkumar Valecha (Propreitor), Shop No. 122, Old Bus stand, Near Canara Bank, Ulhasnagar-421005	Vs.	Assessing Officer, TDS ward, Kalyan, Rani Mansion, Murbad Road, Kalyan W-42301
<b>(अपीलार्थी / Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
<b>स्थायी लेखा सं./PAN No. AAJPV7568D</b>		

अपीलार्थी की ओर से / **Assessee by** : Shri Nisha N. Gwalani, AR

प्रत्यर्थी की ओर से / **Revenue by** : Shri Ram Tiwari, DR

सुनवाई की तारीख / <b>Date of hearing:</b>	31-05-2018
घोषणा की तारीख / <b>Date of pronouncement :</b>	15-06-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-1, Thane [in short CIT(A)], in appeal No. 981/13-14 dated 21.03.2016. The Assessment was framed by the Dy. Commissioner of Income Tax, CPC (TDS), Ghaziabad, U.P in



short 'DCIT'/ AO) for the A.Y. 2013-14 vide order dated 28.12.2013 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the levy of for late filing fee under section 234E of the Act. For this assessee has raised the following ground: -

*“1. that Commissioner of Income Tax (Appeals) has dismissed the request of the assessee in the appeal to waive the late fee levied under section 234E of the Act, without considering the submissions on merits.”*

The other grounds are argumentative; we will deal with as argument.

3. Briefly stated facts are that the assessee is in trading and filed TDS return belatedly for the fourth quarter in form No.26 for AY 2013-14, by delay of 136 days. The assessee before CIT(A) explained that the delay had caused due to frequent changes made in the software requisites for preparation and uploading of the TDS returns and the assessee is not so literate and is a small time trader, having no expertise in computer operations nor can afford to have a qualified professional to oversee the TDS process. Inadvertently, the delay was caused not due to deliberate fault by the assessee, but due to lack of knowledge of high profile computer operations. The law when enacted does not distinguish between the small time business and the big corporate conglomerates, who can afford to employ the qualified professionals to oversee the compliances. Therefore, the Assessee took little more time to find the means to overcome and adopt such technology trust upon the assessee coming to him at an extract cost. Aggrieved, assessee against the confirmation of order by CIT(A) preferred the appeal before Tribunal.



4. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the alleged default pertain to financial year 2012-13 relevant to AY 2013-14. In similar circumstances, Hon'ble Karnataka High court in the case of Fatheraj Singhvi (2016) 73 taxmann.com 252, has considered the issue as the view taken by the Hon'ble High Court is that the amendment in section 200A of the Act with effect from 01.06.2015 is prospective and not retrospective. There is a contradictory view by the Hon'ble Gujarat High Court in the case of Rajesh Kaurani Vs. Union of India (2017) 83 taxmann.com 137 (Gujarat), wherein it is held to be retrospective. In view of the above position, we are of the view that one view is in favour of assessee and another view is against the assessee. Hence, following the decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC), we adopt the decision in favour of the assessee. Accordingly, we are of the view that the provision of section 200A of the Act has amended with effect from 01.06.2015 is prospective and not retrospective. Hence, the late filing fee under section 234E cannot be levied in the present AY. Hence, we delete the levy of fee and allow the appeal of the assessee.

**5. In the result, the appeal assessee is allowed.**

Order pronounced in the open court on 15-06-2018

आदेश की घोषणा खुले में दिनांक 15-06-2018को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 15-06-2018

*Sudip Sarkar /Sr.PS*



**ITA No. 4822/Mum/2016**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**