

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1307/Chny/2017

निर्धारण वर्ष / Assessment Year : 2014-15

&

आयकर अपील सं./ITA Nos.238, 239, 240 & 241/Chny/2018

निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2015-16

M/s A.R.R. Charitable Trust,  
No.15, Krishnaswamy Avenue,  
Luz Church Road, Mylapore,  
Chennai - 600 004.

PAN : AAATA 0330 R

(अपीलार्थी/Appellant)

v. The Assistant Commissioner of  
Income Tax,  
Centralized Processing Cell – TDS,  
The Income Tax Officer, TDS,  
Ward 1(3),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Subramanian, CA

प्रत्यर्थी की ओर से/Respondent by : Shri A. Sasikumar, JCIT

सुनवाई की तारीख/Date of Hearing : 04.07.2018

घोषणा की तारीख/Date of Pronouncement : 24.07.2018

### **आदेश /ORDER**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

All the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax

(Appeals) -17, Chennai, dated 28.02.2017 and pertain to assessment years 2013-14, 2014-15 and 2015-16.

2. There was a delay of 211 days in filing the appeals in I.T.A. Nos.238 to 241/Chny/2018 by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. representative for the assessee and the Ld. D.R. We find that there was sufficient cause for not filing the mentioned appeals before the stipulated time. Therefore, we condone the delay and admit the appeals.

3. The only issue arises for consideration in all these appeals is levy of fee under Section 234E of the Income-tax Act, 1961 (in short 'the Act') when the statement was processed under Section 200A of the Act.

4. Shri R. Subramanian, the Ld. representative for the assessee, placing reliance on the order of this Tribunal in Smt. G. Indhirani v. DCIT (2015) 60 taxmann.com 312, submitted that before 01.06.2015, the Assessing Officer had no authority to levy fee while issuing intimation under Section 200A of the Act. Referring to the order of the CIT(Appeals), the Ld. representative

submitted that the CIT(Appeals) claims that the intimation under Section 200A of the Act was issued on 31.07.2015. This is not correct. Referring to the intimations issued under Section 200A of the Act, a copy of which is available on record, the Ld. representative submitted that all the intimations under Section 200A of the Act were issued before 01.06.2015, therefore, the CIT(Appeals) is not justified in confirming the levy of fee.

5. We heard Shri A. Sasikumar, the Ld. Departmental Representative also. The dispute is with regard to issue of intimation. The CIT(Appeals) claims that the intimation was issued on 31.07.2015, therefore, it is beyond 01.06.2015. We have verified the intimations issued by the Assessing Officer. The intimations were issued for all the years before 01.06.2015. Therefore, the CIT(Appeals) is not correct in saying that the intimations were issued on 31.07.2015. When the intimations were issued before 01.06.2015, this Tribunal is of the considered opinion that the Assessing Officer has no jurisdiction to levy fee under Section 234E of the Act. The amendment to Section 200(3) of the Act was made only with effect from 01.06.2015. This fact was examined by this Tribunal in the case of Smt. G. Indhirani (supra). This Tribunal,

after examining the facts of the cast, has observed at para 7 of its order, as follows:-

"7. The Assessing Officer cannot make any adjustment other than the one prescribed above in Section 200A of the Act. By Finance Act, 2015, with effect from 01.06.2015, the Parliament amended Section 200A by substituting sub-section (1) of clauses (c) to (e). For the purpose of convenience, we are reproducing the amendment made in Section 200A by the Finance Act, 2015 as under:-

"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 1<sup>st</sup> 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."

Therefore, it is obvious that prior to 01.06.2015, there was no enabling provision in Section 200A of the Act for making adjustment in respect of the statement filed by the

assessee with regard to tax deducted at source by levying fee under Section 234E of the Act. The Parliament for the first time enabled the Assessing Officer to make adjustment by levying fee under Section 234E of the Act with effect from 01.06.2015. Therefore, as rightly submitted by the Ld.counsel for the assessee, while processing statement under Section 200A of the Act, the Assessing Officer cannot make any adjustment by levying fee under Section 234E prior to 01.06.2015. In the case before us, the Assessing Officer levied fee under Section 234E of the Act while processing the statement of tax deducted at source under Section 200A of the Act. Therefore, this Tribunal is of the considered opinion that the fee levied by the Assessing Officer under Section 234E of the Act while processing the statement of tax deducted at source is beyond the scope of adjustment provided under Section 200A of the Act. Therefore, such adjustment cannot stand in the eye of law."

6. In view of the above, this Tribunal is of the considered opinion that before 01.06.2015, the Assessing Officer cannot levy fee while issuing intimation under Section 200A of the Act. Therefore, we are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the fee levied under Section 234E of the Act is deleted.

7. In the result, all the appeals filed by the assessee stand allowed.

Order pronounced on 24<sup>th</sup> July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 24<sup>th</sup> July, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-17, Chennai-34
4. आयकर आयुक्त /CIT (TDS), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.