

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK  
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

**आयकर अपील सं./ITA Nos.323 to 332/CTK/2018**

AY: 2013-2014(Quarter-4)

AY: 2014-2015 (Quarter-1, 2, 3 & 4)

AY: 2015-2016 (Quarter-1, 2, 3 & 4)

AY: 2016-2017 (Quarter-1)

TB and ID Hospital, At/PO/Dist-Puri-752002	Vs.	ITO-TDS(1), Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>BBNTI 0335 G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri P.R.Mohanty/D.S.Jethi, AR

राजस्व की ओर से /Revenue by : Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing : **27/08/2018**

घोषणा की तारीख/Date of Pronouncement **27/08/2018**

**आदेश / O R D E R**

**Per Shri Pavan Kumar Gadale, JM:**

These are the appeals filed by the assessee against the order of CIT(A)-1, Bhubaneswar, all dated 25.06.2018 passed in I.T.Appeal No.0134, 0135, 0136 & 0137/17-18 for the assessment year 2013-2014, 2014-2015, 2015-2016 & 2016-2017.

2. The common grievance of the assessee in all the appeals is that the CIT(A) has erred in dismissing the assessee's appeal in respect of levy of late fee u/s.234E of the Act.

3. Brief facts of the case are that in all the above appeals under consideration, admittedly there was a delay in filing of TDS statement and during the processing of TDS return, the AO(TDS) raised demand by way of intimations issued u/s.200A of the Act for levy of fees u/s.234E for

delayed filing of TDS statement for Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015, for Quarters 1 to 4 in the assessment year 2015-2016 and for Quarter 1 in the assessment year 2016-2017, respectively and passed order dated 04.09.2015.

4. Aggrieved by the order of AO, the assessee filed appeals before the CIT(A). The CIT(A) after considering the grounds of appeal of the assessee has dismissed the appeals.

5. Now, the assessee is in further appeals before the Tribunal.

6. Ld AR filed an order of this Bench of the Tribunal in the case of Community Health Centre, ITA No.31/CTK/2017, order dated 14.02.2018 and further submitted that this issue is covered in favour of the assessee in respect of levy of late fee u/s.234E of the Act, which fact has not been controverted by the DR

7. We have heard rival submissions and perused the material on record. We find that on similar issue the coordinate Bench of the Tribunal has decided the levy of late fee u/s.234E of the Act in Community Health Centre, ITA No.31/CTK/2017, order dated 14.02.2018, at page 2, observing as under:-

*“7. We find that the Tribunal in the case of Glee Pharma Pvt. Ltd., ITA Nos.161 to 163/CTK/2016, order dated 28.08.2017, has held as under :-*

*“5. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that on similar issue, this Bench of the Tribunal has deleted the levy of fee u/s.234 E of the Act in the above stated case, observing as under:*

*“We have heard both parties and perused the records. We find that the only issue permeating from all the 5 appeals is regarding imposition of levy of fee for late filing TDS return u/s 234E of the*

*Act, while processing the statements furnished by the assessee u/s 200A of the Act. At the outset itself, it was pointed out by the Ld. Counsel for the assessee that this issue is no longer res integra since the Hon'ble Karnataka High Court in Fatehraj Singhvi v. Union of India (289 CTR 0602) has held that w.e.f. 01.06.2015, the Parliament by way of an amendment to Section 200A of the Act, has empowered the AO to levy fee u/s 234E of the Act while processing u/s 200A of the Act. Therefore, prior to that date i.e.01.06 .2015, the AO had no authority to levy fee u/s 234E of the Act. Therefore, according to the contention of the Ld. Counsel for the assessee, that the AO erred in levying the fee u/s 234E of the Act which been wrongly confirmed by the Ld. CIT(A) and, therefore, the impugned orders of the Ld. CIT(A) need to deleted.*

*6. On the other hand, the Ld. CIT(DR) contended that the Punjab and Haryana High Court in Dr. Amrit Lai Mangal vs. Union of India 62 taxmann.com 310 (Punjab & Haryana) has taken a view which is in favour of the Revenue. On a query from the bench as to whether the jurisdictional High Court i.e. Hon'ble Orissa High Court has passed any orders in respect to the LIS before us. The Ld. DR fairly conceded that there is no order of the Hon'ble Orissa High Court on the issue in hand before us. It is well settled that when there is no order of the Jurisdictional High Court on the issue before us, the Tribunal will follow the order of the High Court which is in favour of the assessee (CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC)). In such a scenario, we are inclined to follow the order of the Karnataka High Court which has been brought to our knowledge by the Ld. Counsel for the assessee.*

*7. The facts in Fatehraj Singh vs..Union of India (supra), which was decided by the Hon'ble Karnataka High Court was that for financial year 2012-13 and 2013-14, TDS was deducted by the respective assesseees and deposited in the Government account. However, as per the Department, there was delay in filing the return/statement with the details of the persons from whom the TDS was deducted including the details and the persons concerned and the transactions etc. The Department issued intimation u/s 200A of the Act, calling upon the respective assesseees to pay late filing fee u/s 234E of the Act in purported exercise of the power u/s 200A of the Act. The assessee challenged the levy of the fee and also the vires of the statute (Section 234E). The Hon'ble High Court did not make any finding in respect of the vires of the statute and the said issue was left open. However, the Hon'ble High Court held that prior to 01.06.2015, the AO while issuing intimation u/s 200A does not have the authority under law, to make any order u/s 243E of the Act and was pleased to delete the order of levy of late fee u/s 234E of the Act. The Hon'ble High Court held as follows In para 22 to 24 which is reproduced as under:*

22. *It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest.*

23. *In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.*

24. *If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.”*

8. *We take note that the facts of the aforesaid case and the facts before us are similar. Only after 01.06.2015, the AO can levy fee under section 234E of the Act while processing the statement under section 200A of the Act and not before. Therefore, respectfully relying the order of the Hon'ble Karnataka High Court, the impugned intimation of the lower authorities levying fee under section 234E of the Act cannot be sustained in law.*

*Accordingly the intimation under section 200A as confirmed by the Ld. CIT(A) in so far as levy of fee under section 234E is set aside and fee levied u/s 243E in all the appeals are ordered to be deleted. However, the other adjustments made by the AO in the impugned intimation shall stand as such. “*

*6. In the appeals before us, the financial year involved is 2013-14. Therefore, respectfully following the precedent, we set aside the orders of lower authorities and delete the levy of fee u/s.234 E of the Act in all the quarters and allow the appeals filed by the assessee.*

8. We on perusal of all the appeals under consideration find that the issue involved in the appeals i.e ITA Nos.323 to 331CTK/2018 are covered by the above orders of the Tribunal as the amendment to Section 200(3) of the I.T. Act was made only with effect from June 1, 2015. Except for the Quarter-1 in the assessment year 2016-2017(i.e.ITA No.332/CTK/2018), all the quarters i.e. Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015-2016 are coming under the purview of amendment to Section 200(3) of the Act. Therefore, the fee levied u/s.234E of the Act while processing the statement of tax deducted at source was beyond the scope provided under Section 200A of the Act. Accordingly, we respectfully follow the judicial precedent and set aside the orders of lower authorities and delete the levy of fee u/s.234E of the Act in Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015-2016 and allow the appeals i.e ITA Nos.323 to 331/CTK/2018 filed by the assessee.

9. With regard to the appeal filed by the assessee for Quarter-1 in assessment year 2016-2017(i.e. ITA No.332/CTK/2018), we considering

the amendment to Section 200(3) of the Act and applicability to the present case of the assessee does not fall under the purview of amendment as the first quarter for the assessment year 2016-2017 ends on 30.06.2015 and the amendment is effective from 01.06.2015. Therefore, we are of the opinion that the assessee is liable to pay the late fee as levied for the assessment year 2016-2017. Accordingly, we uphold the orders of lower authorities and dismiss the ground of appeal of the assessee.

10. In the result, appeals of the assessee i.e. ITA Nos. 323 to 331/CTK/2018 are allowed and ITA No.332/CTK/2018 is dismissed.

Order pronounced in the open court on this 27/08/ 2018.

**Sd/-**  
**(N.S.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**  
**(PAVAN KUMAR GADALE)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 27/08/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-  
TB and ID Hospital,  
At/PO/Dist-Puri-752002
2. प्रत्यर्थी / The Respondent-  
ITO-TDS(1), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

**(Senior Private Secretary)**

आयकर अपीलीय अधिकरण, कटक /

ITAT, Cuttack