

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.1876 & 1875/Hyd/2017
(Assessment Years: 2013-14 & 2014-15)

M/s. Terra Infra Development Limited Hyderabad PAN:AAACN7166R (Appellant)	Vs	Income Tax Officer (TDS) Ward 2(3) Hyderabad (Respondent)
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For Assessee :	Shri K.C. Devdas
For Revenue :	Shri K.J. Rao, DR

Date of Hearing:	08.08.2018
Date of Pronouncement:	03.10.2018

ORDER

Per Smt. P. Madhavi Devi, J.M.

Both are assessee's appeals for the A.Ys 2013-14 & 2014-15 respectively against the order of the CIT (A)-8, Hyderabad dated 28.08.2017. In both the appeals, the grounds raised by the assessee are common except for the quantum. Therefore, for the sake of clarity and ready reference, the grounds of appeal for the A.Y 2014-15 are reproduced hereunder:

"1. The order of the Hon'ble CIT (A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT (A) ought to have observed that the order dated 4.5.2017 passed by the AO rejecting to rectify and delete the fee u/s 234C of the I.T. Act was without appreciating the provisions in proper prospective and therefore, it was erroneous in law and the fee ought to have been deleted.

3. The Hon'ble CIT (A) ought to have held that the AO failed to observe that late fee u/s 234E of the I.T. Act was brought into the fold of section 200A of the I.T. Act w.e.f. 1.06.2015 and therefore, the relevant provision i.e. 234E of the IT Act cannot be applied for the financial year 2013-14.

4. In the facts and circumstances of the case, the Hon'ble CIT (A) ought to have held that the fee of Rs.92,400 charged u/s 234E of the I.T. Act for the financial year 2013-14 was liable for deletion.

5. Any other ground will be raised at the time of hearing”.

2. Brief facts of the case are that the assessee company, engaged in the business of execution of construction work, filed its TDS return as required under the provisions of the Act for the financial year 2012-13 & 2013-14 respectively. While processing the same, the AO charged fee u/s 234E of the I.T. Act. The assessee filed petition u/s 154 of the Act stating that section 234E was brought into fold u/s 200A of the Act only w.e.f. 1.6.2015 and therefore, they cannot be made applicable retrospectively and no fee charged for the A.Ys 2012-13 and 2013-14. The AO however, rejected the application observing that there is no TDS provision under the IT Act to raise such objections. Aggrieved by the same, the assessee filed an application before the AO who confirmed the order of the AO by following the judgment of the Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. Union of India wherein the levy of late fee even before the amendment in section 200A was upheld. The learned Counsel for the assessee, on the other hand, relied upon the decision of the B Bench of the Tribunal at Chandigarh in the case of M/s. Sonalac Paints & Coatings Ltd vs. Dy.CIT in ITA No.1158/CHD/2017 (reported in 2018) 167 DTR (Chd.)Trib.183 wherein the Tribunal has followed the decision of the Hon'ble Karnataka High Court in

the case of Fatheraj Singhvi & Ors. Vs. Union of India & Qrs. 289 CTR 602 (Kar.) wherein it was held that prior to 1.6.2015, no adjustment on account of fee u/s 234E could be made by the AO while processing the returns u/s 200A of the I.T. Act. The Tribunal has observed that as per the established principles of interpretation of Statute, where two view were possible on an issue, the view favourable to the assessee was to be taken and placed reliance upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd, reported in (1973) 88 ITR 192 to hold it in favour of the assessee.

3. The learned DR was also heard.

4. We find that though the provisions for levy of fee in certain cases has been brought into the Statute book w.e.f. 1.7.2012, it has been brought under the purview of section 200A only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra) we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior to 1.6.2015. For the sake of ready reference, the relevant para is reproduced hereunder:

“10. Now coming to the merits of the case, we find force in the argument of the learned Counsel for the assessee that prior to 01.06.2015, there was no mandate, as per the Statute, to make any adjustment on account of levy of fees u/s 234E while processing TDS returns u/s 200A. We have taken note of the order of the Hon'ble Gujarat High Court holding the amendment made to section 200A w.e.f. 01.06.2015, giving power to make adjustment on account of fees u/s 234E while processing returns u/s 200A to be retrospective in nature, stating that this power given to the AO is a machinery provision while the substantive provision of the power to levy fees u/s 234E was always there on the Statute from 01.06.2012. But at the same time, we note that the Hon'ble Karnataka High Court held that levy of fees u/s 234E while processing returns, TDS

u/s 200A prior to 01.06.2015 was without any authority of law. With two divergent view of the Hon'ble High Courts on the issue and in the absence of any decision by the jurisdictional High Court, we concur with the learned Counsel for the assessee that as per the well accepted rule of construction, if two reasonable constructions of a statute are possible the construction which favours the assessee must be adopted. In view of the same, respectfully following the decision of the Karnataka High Court in the case of Fatheraj Singhvi (Supra), we hold that the fees levied in all the present cases u/s 234E prior to 01.06.2015 in the intimations made u/s 200A was without authority of law and the same is therefore, directed to be deleted. In view of the above, all the appeals of the assessee stand allowed”.

5. Respectfully following the same, assessee's appeals for both the A.Ys are allowed.

Order pronounced in the Open Court on 3rd October, 2018.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 3rd October, 2018.

Vinodan/sps

Copy to:

- 1 B.Narsingh Rao & Co. CA, Plot No.554, Road No.92, Jubilee Hills, Hyderabad 500096
- 2 ITO (TDS) Ward 2(3) Hyderabad
- 3 CIT (A)-8 Hyderabad
- 4 CIT – TDS, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order