

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' C' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

एवं ए. मोहन अलंकामणी, लेखा सदस्य

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER & SHRI
A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.457/Chny/2018

निर्धारण वर्ष /Assessment year : 2013-14

M/s.MEPCO Schlenk Engineering Vs. The Deputy Commissioner of
College Committee, Income Tax,
MEPCO Nagar, Amathur (Via) TDS Circle, Madurai.
Sivakasi 626 005.
[PAN AAATM 4053H]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A.No.458/Chny/2018

निर्धारण वर्ष /Assessment year : 2013-14

Shri Vijaykumar Sharma[HUF], Vs. The Income Tax officer,
369K,Kamak Nagar, TDS Circle, Madurai.
Railway Feeder Road,
Sivakasi. 626 123
[PAN AAHHV 9980 R]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A.No.459/Chny/2018

निर्धारण वर्ष /Assessment year : 2013-14

Shri Mangilal Sharma[HUF], Vs. The Income Tax Officer,
3/1356,1357,Opp. To PRC Bus TDS Circle, Madurai.
Depot, Sattur Road,
Sivakasi 626 189.
[PAN AAEHM 4307 G]
(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A.No.460/Chny/2018

निर्धारण वर्ष /Assessment year : 2013-14

M/s.Sharma Transport,
3/1356,137,Opp. To PRC Bus
Depot, Sattur Road,
Sivakasi 626 005.

[PAN ABCFS 1673 C]

(अपीलार्थी/Appellant)

Vs. The Income Tax Officer,
TDS Circle, Madurai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : None
प्रत्यर्थी की ओर से /Respondent by : Mr.Clement Ramesh Kumar,
Additional CIT D.R.
सुनवाई की तारीख/Date of Hearing : 04-10-2018
घोषणा की तारीख /Date of Pronouncement : 08-10-2018

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER

All the appeals are filed by different assessees. ITA No.457/Chny/2018 is the appeal directed against the order of the Commissioner of Income-tax (Appeals)-2(i/c), Madurai in ITA No.159/2016-17 dated 28.11.2017, ITA No.458/Chny/2018 is the appeal filed by the assessee against the order of the CIT(A)-2(i/c), Madurai in ITA No.211/2016-17, ITA No.459/Chny/2018 is the appeal filed by the assessee against the order of the CIT(A)-2(i/c), Madurai in ITA No.210/2016-17, and ITA No.460/Chny/2018 is the appeal filed by the assessee against the order of the CIT(A)-2(i/c), Madurai in ITA No.209/2016-17, all dated 28.11.2017 for assessment year 2013-14.

2. None represented on behalf of the Assessee and Mr.Clement Ramesh Kumar represented on behalf of the Revenue.

3. As all these four appeals of different assessees involved identical issue, the same is disposed off by this common order.

4. The assessee had filed written submissions dated 06.08.2018 before this Tribunal, wherein assessee had submitted the following points for our consideration.

“ WRITTEN SUBMISSION OF THE APPELLANT.

Our appeal is reposted for hearing on 03-10-2018.

In addition to the grounds of appeal, your appellant wish to submit the following written submission.

It relates to the assessment year 2013-2014. The only issue in this appeal is whether the assessing authority can levy fee u/s. 234E while processing the statement u/s. 200A prior to 01-06-2015.

*234E is only an enabling provision to levy fee for the failure to file the statement as contemplated u/s 200(3). No order can be passed u/s 234E. But the statement should be processed u/s 200A(1)(c). According to the proviso no intimation can be sent u/s 200A after the expiry of one year from the end of the financial year in which the **statement** is filed. In our case, the statement is filed on 28- 12-2012 and 28-03-2013. It is processed on 16-*

1-2014. The revised order if any can be passed on or before 31-3-2014 i.e., after one year from 31-3-2013.

Moreover we wish to bring to the kind notice of this Honourable Tribunal the decision reported in 41 ITR (Trib) Page 439 (Chennai).

Hence it is prayed that while deciding this appeal on its merits the decision reported in 41 ITR (Tub) Page 439 (Chennai) may kindly be taken into consideration.

*SIVAKAS I,
06-08-2018.*

APPELLANT."

It was a submission that the assessee has relied upon the decision of Co-ordinate Bench of this Tribunal in the case of Smt. G.Indhirani Vs.DCIT in ITA Nos.1019 to 1021/Mds./2015 dated 10.07.2015 wherein it has been held that the Id. Assessing Officer has exceeded his jurisdiction in levying fee u/s.234E of the Act while processing the statement and making adjustment u/s.200A of the Act for assessment year 2013-14. It was open to the Id. Assessing Officer to pass a separate order u/s.234E of the Act levying fee provided the limitation for such a levy did not expire.

5. On the other hand, Id.D.R placed before us copy of the order of the Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. Union of India dated 20.06.2017 wherein Gujarat High Court held as follows:-

"19. In plain terms, section 200A of the Act is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments, which are, as noted earlier, arithmetical or prima-facie in nature. With effect from 01.06.2015, this provision specifically provides for computing the fee payable u/s.234E of the Act. On the other hand, section 234E is a charging provision creating a charge for levying fee for certain defaults in filing the statements. Under no circumstances a machinery provision can override or overrule a charging provision. We are unable to see that section 200A of the Act creates any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When section 234E has already created charge for levying fee that would thereafter not be necessary to have yet another provision creating the same charge. Viewing section 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision in our understanding is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under section 234E for late filing of the statements.

20. Even in absence of section 200A of the Act with introduction of section 234E, it was always open for the Revenue to demand and collect the fee for late filing of the statements. Section 200A would merely regulate the manner in which the computation of such fee would be made and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being found for section 200A for computation of fee, the fee prescribed under section 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, recasted clause (c) of sub-section (1) of section 200A would be in nature of clarificatory amendment. Even in absence of such provision, as noted, it was always open for the Revenue to charge the fee in terms of section 234E of the Act. By amendment, this adjustment was brought within the fold of section 200A of the Act. This would have one direct effect. An order passed under section 200A of the Act is rectifiable under section 154 of the Act and is also appealable under section 246A. In absence of the power of authority to make such adjustment under section 200A of the Act, any calculation of the fee would not partake the character of the intimation under said provision and it could be argued that such an order would not be open to any rectification or appeal. Upon introduction of the recasted clause (c), this situation also would be obviated. Even prior to 01.06.2015, it was always open for the Revenue to calculate fee in terms of section 234E of the Act. The Karnataka High Court in case of Fatheraj Singhvi [2016] (73 taxmann.com 252) held that section 200A was not merely a regulatory provision, but was conferring substantive on the authority. The Court was also of the opinion that section 234E of the Act was in the nature of privilege to the defaulter if he fails to pay fees then he would be rid of rigor of the penal provision of section 271H of the Act. With both these propositions, with respect, we are unable to concur. Section 200A is not a source of substantive power. Substantive power to levy fee can be traced to section 234E of the Act. Further the fee under section 234E of the Act is not in lieu of the penalty of section 271H of the Act. Both are independent levies. Section 271H only provides that such penalty would not be levied if certain conditions are fulfilled. One of the conditions is that the tax with fee and interest is paid. The additional condition being that the statement is filed latest within one year from the due date."

It was a submission that levy of fee u/s.234E was liable to be upheld.

6. We have considered the rival submissions. A perusal of the decision of the Gujarat High Court in the case of Rajesh Kourani Vs. Union of India dated 20.06.2017 referred to supra clearly shows that the Hon'ble Gujarat High Court was deciding the issue as to the effect of the amendment to Section 234E with effect from 01.06.2015. It was not dealing levy of interest u/s.234E of the Act for the period before the amendment. However, a perusal of the decision of the Co-ordinate Bench in the case of Smt. G.Indhirani Vs.DCIT referred to supra clearly shows that the issue of levy of interest u/s.234E of the Act has not been rejected, but it has been said that such levy has been made by passing a separate order provided the limitation for such levy is not expired. This is in respect of the period prior to 01.06.2015. Here we must also mention that this decision of the Co-ordinate Bench of this Tribunal in the case of Smt. G.Indhirani Vs.DCIT referred to supra has also been reiterated and followed the decision of G.Radhakrishnan in ITA No.526/Chny.2018 dated 30.07.2018. In the circumstances, respectfully following the decision of Co-ordinate Bench of this Tribunal in the case of Smt. G.Indhirani Vs.DCIT referred to supra and Shri G.Radhakrishnan Vs.DCIT referred to supra, on identical grounds, this Tribunal is of the considered opinion that the Id. Assessing Officer has exceeded his jurisdiction in levying the fee u/s.234E of the Act while processing the statement and making adjustments u/s.200A of the Act.

Therefore, the impugned intimation of the lower authorities levying fee u/s.234E of the Act cannot be sustained in law. However, it is made clear that it is opinion to the A.O to pass a separate order u/s.234E of the Act levying fee provided the limitation for such a levy has not expired. Accordingly, the intimation u/s.200A as confirmed by the CIT(A) in so far as levy of fee u/s.234E is set aside and fee levied is deleted.

7. In the result, all the appeals filed by the assesseees are allowed as indicated above.

Order pronounced on October, 2018, at Chennai.

(ए. मोहन अलंकामणी)

(A.MOHAN ALANKAMONY)

लेखा सदस्य /ACCOUNTANT MEMBER

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: October, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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