

**आयकर अपीलीय अधिकरण पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE**

**सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

Sl.No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year	Quarter	Form
1-11	651/PUN/2018 To 661/PUN/2018	Medical Superintendent Rural Hospital Dodi BK, Near Brahmanand High School, Nashik Pune Highway, Sinnar, Nashik-422603 PAN: NSKMO4895C	The Dy. Commissioner of Income Tax, CPC (TDS), Ghaziabad, U.P.	2013-14	Qr-2	24Q
				2013-14	Qr-3	24Q
				2013-14	Qr-4	24Q
				2014-15	Qr-1	24Q
				2014-15	Qr-2	24Q
				2014-15	Qr-3	24Q
				2014-15	Qr-4	24Q
				2015-16	Qr-1	24Q
				2015-16	Qr-2	24Q
				2015-16	Qr-3	24Q
2015-16	Qr-4	24Q				
12-22	1018PUN/2018 To 1028/PUN/2018	Junagade Healthcare Pvt. Ltd., Principal Officer, 1, Aakar, Thatte Nagar, Nr. HDFC Bank, Gangapur Road, Nashik-422005 PAN: NSKJO2542B	The Asst. Commissioner of Income Tax, CPC (TDS), Ghaziabad, U.P.	2013-14	Qr-3	26Q
				2013-14	Qr-4	26Q
				2013-14	Qr-4	24Q
				2014-15	Qr-1	24Q
				2014-15	Qr-2	24Q
				2014-15	Qr-3	24Q
				2014-15	Qr-4	24Q
				2014-15	Qr-1	26Q
				2014-15	Qr-2	26Q
				2014-15	Qr-3	26Q
2014-15	Qr-4	26Q				

अपीलार्थी की ओर से / Appellant by : Shri Sanket Joshi
प्रत्यर्थी की ओर से / Respondent by : Shri Rajesh Gawli

सुनवाई की तारीख / Date of Hearing : 03.10.2018	घोषणा की तारीख / Date of Pronouncement: 25.10.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of appeals filed by two different assessee are against separate orders of CIT(A)-3, Nashik, dated 20.04.2018 and 21.02.2018, respectively, relating to different assessment years against orders passed under sections 154 & 200A and 200A r.w.s. 234E of the Income-tax Act, 1961 (in short 'the Act').

2. The bunch of present appeals relating to two different assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. First bunch of appeals relate to Medical Superintendent Rural Hospital and the second bunch of appeals relate to Junagade Healthcare Pvt. Ltd. Both the bunches relate to similar issue of levy of charges under section 200A r.w.s. 234E of the Act. In order to adjudicate the issues, we refer to the facts and issues in ITA No.651/PUN/2018.

4. The assessee in ITA No.651/PUN/2018 has raised the following grounds of appeal:-

- 1] *The learned CIT(A) erred in upholding the levy of late fee u/s 234E of Rs.3,000/- in the intimation order u/s 200A passed in respect of TDS statement filed in Form 24Q for Quarter 2 of A.Y. 2013-14.*
- 2] *The learned CIT(A) failed to appreciate that the levy of late fee u/s 234E in the intimation order passed u/s 200A for A.Y. 2013-14 (Q2 – 24Q was bad in law and hence, the same ought to have been deleted.*

5. Briefly, in the facts of the case, the assessee had furnished TDS returns for different quarters in Form No.24Q relating to assessment years 2013-14, 2014-15 and 2015-16. The said TDS returns were processed and late filing fees was charged under section 234E of the Act for default in quarter No.2 in assessment year 2013-14, late fees of ₹ 3,000/- was levied, for quarter No.3, ₹ 4,500/- and for quarter No.4, ₹ 1,67,490/- was levied. Similarly, for four quarters of assessment year 2014-15, late fees under section 234E of the Act was levied at ₹ 3,000/-, ₹ 8,400/-, ₹ 6,000/- and ₹ 1,99,016/-. In assessment year 2015-16, for quarter No.1, ₹ 1,19,000/-, for quarter No.2, ₹ 34,350/-, for quarter No.3, ₹ 34,500/- and for quarter No.4, ₹ 1,60,970/- was levied. The assessee was held to have defaulted in filing TDS returns, hence late filing fees

were levied under section 234E of the Act while sending intimation under section 200A of the Act.

6. Before the CIT(A), first plea of assessee was that there was no delay in payment of taxes though there was delay in filing of TDS returns. It was explained that the assessee department was based in rural area and there was problem of transportation and communication and the department was not well versed with income tax provisions. Reliance was placed on the ratio laid down by the Pune Bench of Tribunal in the case of Gajanan Construction Vs. DCIT (2016) 73 taxmann.com 380 (Pune – Trib.). The CIT(A) observed that as per section 200(3) of the Act inserted by Finance Act, 2006 w.e.f. 2005, the deductor was responsible for preparing TDS statement and delivering the TDS statements to the concerned authority as per Rule 31A of the Income Tax Rules, 1962 (in short 'the Rules'). Further, the deductor was required to deliver the TDS statements within time prescribed. However, many of the deductors were not filing TDS returns in time. Hence, the Legislature brought in section 234E of the Act to provide effective deterrence as is apparent from Explanatory Notes to Finance Act, 2012, which provided levy of fees @ ₹ 200/- per day. The CIT(A) observed that the CPC, TDS accordingly passed orders levying late fees under section 234E of the Act r.w.s. 200A(1) of the Act in case of delayed filing of return. Since many Courts had held that there was no enabling provision under section 200A of the Act before 01.06.2015 to levy fees under section 234E of the Act, so section 200A of the Act was amended w.e.f. 01.06.2015 by Finance Act, 2015, which specifically provides levy of late filing fees under section 234E of the Act while processing the return under section 200A of the Act. The CIT(A) took note of the decision of Pune Bench of Tribunal, wherein it was decided that prior to 01.06.2015, there was no enabling provision in section

200A of the Act for making adjustment in respect of statements filed by assessee with regard to tax deducted at source, by levying late filing fees under section 234E of the Act. Thus, the Assessing Officer could not make any adjustment other than the ones prescribed in section 200A of the Act. The Assessing Officer could make adjustment relating to levying of late filing fees under section 234E of the Act only w.e.f. 01.06.2015. He further observed that the date of processing was thus important. In the instant case of assessee, not only the processing was done after 01.06.2015 but the returns for all the quarters were filed after amendment to section 200A of the Act. He acknowledged that late filing fees under section 234E of the Act related to financial years 2012-13, 2013-14, 2014-15 and 2015-16, wherein TDS returns were filed after the amendment i.e. 01.06.2015 and intimation under section 200A of the Act was also sent. He further referred to the decisions of Hon'ble Bombay High Court and Hon'ble High Court of Karnataka, wherein the constitutional validity of section 234E of the Act has been upheld. He then referred to recent decision of the Hon'ble High Court of Gujarat, in the case of *Rajesh Kourani Vs. Union of India* (2017) 83 taxmann.com 137 (Guj), which had differed from the view taken by the Hon'ble High Court of Karnataka in the case of *Fatheraj Singhvi Vs. Union of India* (2016) 73 taxmann.com 252 (Kar) and held that it was always open for the Revenue to charge fees in terms of section 234E of the Act. Since the returns of TDS were filed after 2016 and were processed after 2016 when there was enabling provision in section 200A of the Act for levying late fees under section 234E of the Act, late filing fees levied by Assessing Officer were upheld by CIT(A).

7. The assessee is in appeal against order of CIT(A).

8. The learned Authorized Representative for the assessee pointed out that the issue raised in the present appeals is squarely covered by the orders of Tribunal in the case of Medical Superintendent Rural Hospital with lead order in the case of Swami Vivekanand Vidyalaya Vs. DCIT (CPC)-TDS, Ghaziabad in ITA Nos.2377/PUN/2017 to 2386/PUN/2017, decided on 21.12.2017, wherein the issue was decided relying on other decisions of Pune Bench of Tribunal and it was held that where the amendment to section 200A(1) of the Act was prospective in nature, then Assessing Officer while processing TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Accordingly, late filing fees charged under section 234E of the Act was deleted. He further referred to the decision of the Hon'ble High Court of Karnataka in Fatheraj Singhvi Vs. Union of India (supra), wherein it has been laid down that demand raised under section 200A of the Act for computation and intimation for the payment of fees under section 234E of the Act could not be made in purported exercise of power under section 200A of the Act for the period of respective assessment years prior to 01.06.2015. He also pointed out that impugned notices under section 200A of the Act for computation and intimation for payment of fees under section 234E of the Act as they relate to for the period of tax deducted prior to 1st day of June, 2015 were set aside. The learned Authorized Representative for the assessee pointed out that CIT(A) has relied on the decision of the Hon'ble High Court of Gujarat in Rajesh Kourani Vs. Union of India (supra) and not relied on the decision of Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra). However, the decision in favour of assessee is to be applied. For this proposition, he relied on the ratio laid down by the Hon'ble Supreme Court in CIT Vs. M/s. Vegetable Products Ltd. (1973) 88 ITR 192 (SC) and ratio laid down by Agra

Bench of Tribunal in Sudarshan Goyal Vs. DCIT (2018) 194 TTJ UO (Agra)(UO) 22.

9. In respect of second bunch of appeals in Junagade Healthcare Pvt. Ltd., the learned Authorized Representative for the assessee pointed out that the issue is identical. However, the CIT(A) held the appeals filed by assessee to be delayed. In this regard, he pointed out that appeals filed by assessee were not against intimation issued by Assessing Officer but against the order passed under section 154 of the Act and the CIT(A) has erred in computing the period in which the appeals has to be filed. He further pointed out that similar issue has been decided by Pune Bench of Tribunal in Swami Vivekanand Vidyalaya Vs. DCIT (CPC)-TDS, Ghaziabad (supra).

10. The learned Departmental Representative for the Revenue on the other hand, placed heavy reliance on the orders of authorities below.

11. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing

intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in ITA Nos.560/PN/2016 & 561/PN/2016, 1018/PN/2016 to 1023/PN/2016 in Maharashtra Cricket Association Vs. DCIT (CPC)-TDS, Ghaziabad, relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under:-

“34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law.”

12. The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education and Research Foundation in ITA Nos.1887 to 1893/PUN/2016 and others relating to assessment years 2013-14 and 2014-15 vide order dated 13.01.2017 and also in Swami Vivekanand Vidyalaya Vs. DCIT(CPC)-TDS (supra) and Medical Superintendant Rural Hospital Vs. ACIT (CPC)-TDS in ITA Nos.2072 & 2073/PUN/2017, order dated 21.12.2017, which has been relied upon by the learned Authorized Representative for the assessee.

13. The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra) had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read as under:-

“21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other

mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

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.”

14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.

15. In other words, the Hon'ble High Court of Karnataka explained the position of charging of late filing fees under section 234E of the Act and the mechanism provided for computation of fees and failure for payment of fees under section 200A of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under section 200A of the Act for computation and intimation for payment of late filing fees under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the Hon'ble High Court. In view of said proposition being laid down by the Hon'ble High Court of Karnataka (supra), there is no merit in observations of CIT(A) that in the present case, where the returns of TDS were filed for each of the quarters after 1st day of June, 2015 and even the order charging late filing fees was passed after June, 2015, then the same are maintainable, since the amendment had come into effect. The CIT(A) has overlooked the fact that notices under section 200A of the Act were issued for computing and charging late filing fees under section 234E of the Act for the period of tax deducted prior to 1st day of June, 2015. The same cannot be charged by issue of notices after 1st day of June, 2015 even where the returns were filed belatedly by the deductor after 1st June, 2015, where it clearly related to the period prior to 01.06.2015.

16. We hold that the issue raised in the present bunch of appeals is identical to the issue raised before the Tribunal in different bunches of appeals and since the amendment to section 200A of the Act was prospective in nature, the Assessing Officer while processing TDS returns / statements for the period prior to 01.06.2015 was not empowered to charge late filing fees under section 234E of the Act, even in cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said

TDS returns after June, 2015. Accordingly, we hold that intimation issued by Assessing Officer under section 200A of the Act in all the appeals does not stand and the demand raised by charging late filing fees under section 234E of the Act is not valid and the same is deleted.

17. Before parting, we may also refer to the order of CIT(A) in relying on the decision of Hon'ble High Court of Gujarat in Rajesh Kourani Vs. Union of India (supra). On the other hand, the learned Authorized Representative for the assessee has pointed out that the issue is settled in favour of assessee by the Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra). Since we have already relied on the said ratio laid down by the Hon'ble High Court of Karnataka, the CIT(A) has mis-referred to both decisions of Hon'ble High Court of Karnataka and Hon'ble High Court of Gujarat; but the CIT(A) has failed to take into consideration the settled law that where there is difference of opinion between different High Courts on an issue, then the one in favour of assessee needs to be followed as held by the Hon'ble Supreme Court in CIT Vs. M/s. Vegetable Products Ltd. (supra), in the absence of any decision rendered by the jurisdictional High Court. The Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (2015) 54 taxmann.com 200 (Bom) had decided the constitutional validity of provisions of section 234E of the Act and had held them to be *ultra vires* but had not decided the second issue of amendment brought to section 200A of the Act w.e.f. 01.06.2015. In view thereof, respectfully following the ratio laid down by the Hon'ble High Court of Karnataka and Pune Bench of Tribunal in series of cases, we delete the late filing fees charged under section 234E of the Act for the TDS returns for the period prior to 01.06.2015.

18. Further before parting, we may also refer to the order of CIT(A) in the case of Junagade Healthcare Pvt. Ltd., where the CIT(A) had dismissed appeals of assessee being delayed for period of December, 2013 and July, 2014. The CIT(A) while computing delay had taken the date of intimation under section 200A of the Act as the basis, whereas the assessee had filed appeals before CIT(A) against the order passed under section 154 of the Act. The CIT(A) had noted that rectification application was filed in February, 2018 which was rejected by CPC on the same day. The CIT(A) was of the view that there was no merit in condonation of delay, wherein appeals were filed beyond the period prescribed. The assessee had filed appeals against the order passed under section 154 of the Act, hence the time period of appeals filed by assessee before the CIT(A) have to be computed from the date of order passed under section 154 of the Act and not from the date of issue of intimation. Thus, there is no merit in the order of CIT(A) in dismissing the appeals of assessee on this issue.

19. We find similar issue has been decided by us in the case of Medical Superintendent Rural Hospital Vs. ACIT(CPC)-TDS (supra) and vide para 15, order dated 21.12.2017 it was held as under:-

“15. Further, before parting, we may also refer to the order of the CIT(A) in these two appeals. The CIT(A) had dismissed the appeals of the assessee being delayed for a period of two and half years. The CIT(A) had taken the date of intimation under section 200A(3) dated 07-08-2014 and computed the delay in filing the appeal late before him. However, the assessee had filed the appeal before the CIT(A) against the order passed under section 154 of the Act. The said application for rectification under section 154 was filed on 08-06-2017/09-03-2017 in the respective years. The said application was decided by the Assessing Officer on 09-06-2017. The assessee filed an appeal against the dismissal of the rectification application filed under section 154 of the Act. The said fact is clear from the perusal of Form No.35 with special reference to Column 2(a) and 2(b). In the entirety of the above said facts and circumstances, we find no merit in the order of CIT(A) in the case of Medical Superintendent Rural Hospital, Surgana in dismissing the appeal in-limine being filed beyond the period of limitation. We have already decided the issue on merits in favour of assessee.”

20. We have already decided the issue on merits in favour of assessee. Accordingly, the grounds of appeal raised by assessee in all appeals are allowed.

21. In the result, all the appeals of assessee are allowed.

Order pronounced on this 25th day of October, 2018

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 25th October, 2018.

GCVSR

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Nashik
4. CIT, (TDS), Pune
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, पुणे "ए"
/ DR `A`, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune