

आयकर अपीलिय अधिकरण, "बी" न्यायपीठ, चेन्नई।  
IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH: CHENNAI  
श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND  
SHRI DUVVURU R.L.REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1825/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2013-14

The Lotus Scores and Screens,  
4, Shanmugam Road,  
Sivakasi-626 123.

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

**[PAN: AAFT5403G]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	None
प्रत्यर्थी की ओर से /Respondent by	:	Shri G.N. Raghavendra Rao, JCIT
सुनवाई की तारीख/Date of Hearing	:	13.11.2018
घोषणा की तारीख /Date of Pronouncement	:	20.11.2018

**आदेश / ORDER**

**PER DUVVURU R.L.REDDY, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 2, Madurai, dated 09.04.2018 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the late fee levied under section 234E of the Income Tax Act, 1961 ["Act" in short].

2. Brief facts of the case are that during the Financial Year 2012-13, the Deductor has filed Form 26Q for the fourth quarter on 15.07.2013 as against the due date of 15.05.2013. Thus, there is a delay of 61 days in filing the statement. The CPC TDS, Vaishali, Ghaziabad has processed the statement on 18.01.2014

and an intimation was sent to the deductor under section 200A with a demand of ₹.5,713/- being levy of fees under section 234E of the Act since the deductor has filed E-TDS statements beyond the time limit prescribed by the Act. Against the Intimation sent by the Department, the deductor has filed a petition under section 264 of the Act appeal before Id. CIT(TDS),Coimbatore. Vide his order dated 09.02.2016, the Id. CIT(TDS) remitted back the issue to the Assessing Officer for levying late fee under section 234E of the Act. Accordingly, after considering the submissions of the assessee and in compliance to the order of the Id. CIT(TDS), the Assessing Officer levied late fee of ₹.5,713/- under section 234E of the Act.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case, the Id. CIT(A) confirmed the late fee levied under section 234E of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. None appeared on behalf of the assessee despite service of notice through RPAD. However, the assessee has filed a written submission, wherein, it was prayed that while deciding the appeal on its merits, the decision in 41 ITR (Trib) 439 (Chennai) and the decision in I.T.A. No. 526/Chny/2018 dated 30.07.2018 may be taken into consideration. On the other hand, the Id. DR supported the orders of the authorities below.

5. We have heard the Id. DR, perused the materials available on record and gone through the orders of authorities below. We have also gone through the case law referred to in the additional written submission of the assessee and find that the issue involved in this appeal is squarely covered in favour of the assessee. While adjudicating identical issue on similar facts and circumstances, in the case of G. Radhakrishnan v. DCIT in I.T.A. No. 526/Chny/2018 dated 30.07.2018 for the assessment year 2013-14, the Coordinate Benches of the Tribunal, has observed and held as under:

*“3. None was present for the assessee, however, it has filed a written submission, wherein, it has submitted that the E-TDS statement should be processed u/s. 200A(1)(C) which was inserted by the Finance Act, 2015 w.e.f. 01.06.2015 only. According to the provisions of section 200A(1), 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 this case, the assessee filed the E-TDS on 29.06.2013, which was processed on 16.01.2014. The revised order, if any, can be passed on or before 31.03.2015 i.e., after one year from 31.03.2014. It has further pleaded that the ITAT, A Bench, Chennai in its orders in ITA Nos. 1019, 1020 & 1021/Mds/2015 dated 10.07.2015 in the case of Smt. G. Indhirani vs. The Deputy Commissioner of Income Tax, CPC-TDS, Ghaziabad has set aside the intimation u/s. 200A for the reason that prior to 01.06.2015, there was no enabling provision in section 200A of the Act for levy of fees u/s. 234E while processing the statement of tax deducted at source. The ITAT has also held that it is open to the 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. Thus, the assessee submitted that the order passed by the officer dated 27.12.2016 is barred by limitation. Per contra, the DR supported the orders of the Ld. AO and the Ld. CIT(A).*

*4. We find merit in the submissions made by the assessee. As held by this ITAT, the intimation sent to the assessee u/s. 200A dated 16.01.2014 raising the demand of Rs. 9,000/- u/s. 234E towards levy of late filing fee is invalid as there was no enabling provision in section 200A, viz., clause (1)(C) of section 234E, prior to 01.06.2015 for levy of fees u/s. 234E while processing the statement of tax deducted at source. It was open for the AO to pass separate order u/s. 234E levying the fee,*

*provided the limitation for such a levy did not expire. However, in this case, the AO has not passed any order u/s. 234E independently within 31.03.2015 and hence, the impugned order is set aside.*

5. *In the result, the assessee's appeal is allowed."*

6. In the present case, the statement was filed on 15.07.2013, which was processed on 18.01.2014. The revised order, if any, can be passed on or before 31.03.2015 i.e., after one year from 31.03.2014. However, the Assessing Officer has not passed any order under section 234E of the Act independently within 31.03.2015 and thus, the order levying fee under section 234E of the Act is barred by limitation. Accordingly, we set aside the orders of the authorities below and allow the ground raised by the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 20<sup>th</sup> November, 2018, in Chennai.

Sd/-  
(अब्राहम पी. जॉर्ज)  
(ABRAHAM P. GEORGE)  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(धुव्वुरु आर.एल. रेड्डी)  
(DUVVURU R.L. REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 20.11.2018.  
VM

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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