आयकर अपीलीय अधिकरण, "डी" न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL 'D' 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.2953/Chny/2017**
निर्धारण वर्ष **/Assessment Year: 2013-14**

K.R. Devendrier Son, 176, Fort Main Road, Shevapet, Salem 636 002.	Vs.	The Income Tax Officer, TDS Ward, 3, Gandhi Road, Salem 636 007.

[PAN: AACFK0776D]

(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Ms. S. Sriniranjini, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Ms. G.D. Jayanthi Angayarkanni, JCIT
सुनवाई की तारीख/Date of Hearing	:	26.11.2018
घोषणा की तारीख /Date of Pronouncement	:	03.12.2018

आदेश **/ O R D E R**

PER DUVVURU R.L.REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals), Salem, dated 29.09.2017 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the assessee is that the ld. CIT(A) has erred in confirming the fees 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 09.04.2014 as against the due date of 15.05.2013. Thus, there is a delay of 329 days in filing the

statement. The CPC TDS, Vaishali, Ghaziabad has processed the statement on 17.04.2014 and an intimation was sent to the deductor under section 200A with a demand of ₹.59,290/- 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 an appeal before ld. CIT(A), Salem. Vide his order dated 01.12.2015, the ld. CIT(A) has allowed the appeal of the deductor by following two ITAT judgments in the cases of Sibia Healthcare Private Limited v. DCIT(ITAT, Amritsar) and Smt. G.Indhirani v. DCIT(ITAT, Chennai).

3. Since in the decision of the Tribunal in the case of Smt. G. Indhirani v. DCIT in I.T.A. Nos. 1019, 1020 & 1021/Mds/2015 dated 10.07.2015 followed by the ld. CIT(A), wherein it was mentioned that it is open to the Assessing Officer to pass a separate order under section 234E of the Act levying fee provided the limitation for such a levy has not expired, vide order dated 31.03.2016, under section 234E of the Act, the Assessing Officer levied fees of ₹.59,290/- for late filing of 4th quarter of 26Q statement for the financial year 2012-13. On appeal, the ld. CIT(A) confirmed the levy of fees under section 234E of the Act vide his order dated 29.09.2017.

4. On being aggrieved, the assessee is in appeal before the Tribunal. By filing copy of the order of the Tribunal in the case of M/s. Palanisamy Gounder Charitable Trust v. ITO in I.T.A. Nos. 2947 to 2949/Chny/2017 dated 31.07.2018 relevant to the assessment years 2013-14 to 2015-16, the ld.

Counsel for the assessee has submitted that the Tribunal has decided the issue under appeal in favour of the assessee for the assessment years 2013-14 & 2014-15 and prayed for similar decision in the present appeal.

5. On the other hand, the ld. DR supported the orders of the authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Similar issue on identical fact was subject matter in appeal before the Tribunal in the case of M/s. Palanisamy Gounder Charitable Trust v. ITO (supra) for the assessment years 2013-14 & 2014-15, wherein the Tribunal has observed and held as under:

> *"7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Admittedly, the onus was upon the assessee to prepare statements and deliver the same within prescribed time before the prescribed authority, but the power to collect the fees by the prescribed authority vested in such authority only by way of substitution of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015.*
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> *8. We have perused the Memorandum to the Finance Bill, 2015 in which clause (c) to section 200A(1) of the Act was introduced. The Finance Bill took note of the provisions of Chapter XVIIB, under which the person deducting tax i.e. deductor was required to file quarterly tax deduction at source statement containing the details of deduction of tax made during the quarter by the prescribed due dates. Similar responsibility is on a person required to collect tax of certain specified receipts under section 206C of the Act. In order to provide effective deterrence against the delay in furnishing TDS / TCS statements, the Finance Act, 2012 inserted section 234E of the Act to provide for levy of fees on late furnishing of TDS / TCS statements. The Memo further took note of the fact that the Finance (No.2) Act, 2009 inserted section 200A in the Act, which provided for furnishing of TDS statements for determining*

the amount payable or refundable to the deductor. It further took note that however, as section 234E of the Act was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. It was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. The Memo explaining the Finance Bill, 2015 very categorically held that currently there does not exist any provision in the Act to enable the processing of TCS returns and hence, a proposal was made to insert a provision in this regard and also the post provision shall incorporate the mechanism for computation of fees payable under section 234E of the Act. The Finance Bill further refers to the existing provisions of the Act i.e. after processing of TDS statement, intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TDS statement is (i) subject to rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of payment under section 156of the Act. The Finance Bill further provided that intimation generated after the proposed processing of TCS statement shall be at par with the intimation generated after processing of TDS statement and also provided that failure to pay tax specified in the intimation shall attract levy of interest as per provisions of section 220(2) of the Act. Further, amendments were also made in respect of the scheme of payment of TDS / TCS by the Government, deductor / collector which are not relevant for deciding the issue in the present appeal and hence, the same are not being referred to. The Finance Bill further provided that the amendment would take effect from 01.06.2015.

9. The above Memo further explaining the provision relating to insertion of clause (c) to section 200A of the Act clarifies the intention of Legislature in inserting the said provision. The provisions of section 234E of the Act were inserted by the Finance Act, 2012, under which the provision was made for levy of fees for late furnishing TDS / TCS statements. Before insertion of section 234E of the Act, the Finance (No.2) Act, 2009 had inserted section 200A in the Act, under the said section, mechanism was provided for processing of TDS statements for determining the amount payable or refundable to the deductor, under which the provision was also made for charging of interest. However, since the provisions of section 234E of the Act were not on statute when the Finance (No.2) Act, 2009 was passed, no provision was made for determining the fees payable under section 234E of the Act at the time of processing the TDS statements. So, when section 234E of the Act was introduced, it provided that the person was responsible for furnishing the TDS returns / statements within stipulated period and in default, fees

would be charged on such person. The said section itself provided that fees shall not exceed the amount of tax deducted at source or collected at source. It was further provided that the person responsible for furnishing the statements shall pay the said amount while furnishing the statements under section 200(3) of the Act. However, power enabling the Assessing Officer to charge / levy the fee under section 234E of the Act while processing the TDS returns/ statements filed by a person did not exist when section 234E of the Act was inserted by the Finance Act, 2012. The power to charge fees under the provisions of section 234E of the Act while processing the TDS statements, was dwelled upon by the Legislature by way of insertion of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. Accordingly, we hold that where the Assessing Officer has processed the TDS statements filed by the deductor, which admittedly, were filed belatedly but before insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015, then in such cases, the Assessing Officer is not empowered to charge fees under section 234E of the Act while processing the TDS returns filed by the deductor.

10. The Hon'ble Supreme Court in the case of CIT Vs. Vatika Township Pvt. Ltd. [2014] 49 Taxman 249 has explained the general principle concerning retrospectivity and held that "of the various rules guiding how a legislation has to be interpreted, one established rule is that unless contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. ***Idea behind the rule is that current law should govern current activities"****. The Memo explaining the Finance Bill, 2015 very clearly also recognizes that and refers to the current provisions of sub-section (3) to section 200 of the Act, under which the deductor is to furnish TDS statements. However, as section 234E of the Act was inserted after insertion of section 200A in the Act, the existing provisions of section 200A of the Act did not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. In this regard, it was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. In other words, the Assessing Officer is empowered to charge fees payable under section 234E of the Act in the intimation issued after insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015. The Legislature itself recognized that under the existing provisions of section 200A of the Act i.e. prior to 01.06.2015, the Assessing Officer at the time of processing the TDS statements did not have power to charge fees under section 234E of the Act and in order to cover up that, the amendment was made by way of insertion of clause (c) to section 200A of the Act. In such scenario, it cannot be said that insertion made by section 200A(1)(c) of the Act is retrospective in nature, where the Legislature was aware that the fees could be charged*

under section 234E of the Act as per Finance Act, 2012 and also the provisions of section 200A of the Act were inserted by Finance (No.2) Act, 2009, under which the machinery was provided for the Assessing Officer to process the TDS statements filed by the assessee. The insertion categorically being made w.e.f. 01.06.2015 lays down that the said amendment is prospective in nature and cannot be applied to processing of TDS returns / statements prior to 01.06.2015.

11. In the case of Sri Fatheraj Singhvi & Ors v. Union of India & Ors in Writ Appeal Nos.2663-2674/2015(T-IT) & Ors dated 26.08.2016 the Hon'ble Karnataka High Court has quashed the intimation issued under section 200A of the Act levying the fees for delayed filing the TDS statements under section 234E of the Act. The Hon'ble High Court notes that the Finance Act, 2015 had made amendments to section 200A of the Act enabling the Assessing Officer to make adjustments while levying fees under section 234E of the Act was applicable w.e.f. 01.06.2015 and has held that it has prospective effect. Accordingly, the Hon'ble High Court held that "intimation raising demand prior to 01.06.2015 under section 200A of the Act levying section 234E of the Act late fees is not valid".

12. On the ratio laid down by the Coordinate Benches of Tribunal in the case of G. Indirani v. DCIT (supra), on an another aspect, wherein, it was held that before 01.06.2015, whether the Assessing Officer had authority to pass a separate order under section 234E of the Act levying fees for delay in filing the TDS statements under section 200(3) of the Act; the Tribunal held 'yes' that the assessing authority had such power and after 01.06.2015, the Assessing Officer was within his limit to levy fees under section 234E of the Act even while processing the TDS statements under section 200A of the Act. In view of the present set of facts, where the Assessing Officer had charged fees under section 234E of the Act while processing the statements under section 200A of the Act before 01.06.2015, there is no merit in the reliance placed upon by the learned DR on the said proposition laid down by the Chennai Bench of Tribunal and we dismiss the same.

13. 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 appeal 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 I 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. Accordingly, we set aside the order of the ld. CIT(A) for the assessment years 2013-14 and 2014-15 and direct the Assessing Officer to delete the fees levied under section 234E of the Act.

The ld. DR could not controvert the above findings of the Tribunal. Respectfully following the above decision, we set aside the order of the ld. CIT(A) and direct the Assessing Officer to delete the fees levied under section 234E of the Act.

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

Order pronounced on the 3rd December, 2018, in Chennai.

Sd/-	Sd/-
(**अब्राहम पी. जॉर्ज**)	**(धुव्वुरु आर.एल. रेड्डी)**
(ABRAHAM P.GEORGE)	(DUVVURU R.L. REDDY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated: 03.12.2018.
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