

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 312/VIZ/2016
(Asst. Year : 2015-16)**

Smt. Pavani Devi, vs. ACIT, CPC (TDS),
M/s. N. Koteswara & Co., CAs, Ghaziabad.
D.No. 23-6-17/2,
Patnam Bazar, Guntur.

PAN No. AFMPD 2253 F
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Mrs. Suman Malik – Sr.DR

Date of hearing : 20/12/2018.
Date of pronouncement: 01/01/2019.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Guntur, dated 18/05/2016 for the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:-

- "1. *The order of the Id. CIT(A)-1, Guntur is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Id. CIT(A)-1, Guntur is not justified in upholding the action of the Assessing Officer in charging a sum of Rs. 16,222/- towards late filing fee u/s. 234E of the Income Tax Act, 1961.*

3. *Any other ground that may be urged at the time of appeal hearing."*

3. Facts of the case, in brief, are that assessee filed a statement in Form No. 26Q for Quarter-4 for the Financial Year 2015-16 on 28/10/2015. On processing the same, the ACIT, CPC (TDS) levied late filing fee under section 234E of the Income Tax Act, 1961 (hereinafter referred to as 'Act') for the Assessment Year 2015-16 for Rs.16,222/-. The assessee has challenged the same before the Id. CIT(A). The Id. CIT(A) confirmed the order of the Assessing Officer.

4. On being aggrieved, assessee carried the matter in appeal before the Tribunal.

5. Ld. counsel for the assessee has submitted that the issue involved in this appeal has been considered by the Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi & Ors. Vs. Union of India & Ors.* [(2016) 289 CTR 602 (Kar.)] wherein it has been categorically held that *"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 01/06/2015"*. Further, he also relied on the decision of the coordinate bench of the Visakhapatnam

tribunal in the case of *Sri Sai Durga Housing Estates Vs. ACIT, CPC (TDS)* in ITA Nos. 2 & 3/VIZ/2018, dated 26/04/2018.

6. On the other hand, Id. Departmental Representative strongly supported the orders of the authorities below.

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below.

8. The only issue involved in this appeal is whether levy of late fee under section 234E can be charged prior to 01/06/2015 or not. According to the Assessing Officer and the Id. CIT(A) has held that section 200A(1)(c) is a clarificatory in nature, therefore, it applies even the period prior to 01/06/2015. The coordinate bench of the Visakhapatnam tribunal in the case of *Sri Sai Durga Housing Estates Vs. ACIT, CPC (TDS)* in ITA Nos. 2 & 3/VIZ/2018, dated 26/04/2018 wherein by considering the judgments of the Hon'ble Gujarat & Karnataka High Courts and also the Judgment of the Hon'ble Apex Court in the case of *CIT Vs. M/s. Vegetables Products Ltd.* (88 ITR 192) has observed that the decision of the Hon'ble Karnataka High Court is most favourable to the assessee, required to be adopted.

9. The Hon'ble Karnataka High Court has considered the same issue in the case of *Sree Ayyappa Educational Charitable Trust vs.*

DCIT [(2018) 301 CTR 150 (Kar.)] by considering the judgment of the same High Court in the case of *Fatheraj Singhvi & Ors.* (supra) and held that *"when the amendment made under section 200A of the Act, which has come into effect on 01/06/2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under section 234E could be made for the TDS deducted for the respective assessment year prior to 01/06/2015. Hence, the demand notices under section 200A by the respondent authority for intimation for payment of fee under section 234E can be said as without any authority of law and the same are quashed and set aside to that extent."*

10. The Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi & Ors.* (supra) has held as under:-

"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.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against

all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.

11. In the present case, the late fee charged by the Assessing Officer period is prior to 01/06/2015, therefore, we respectfully following the decisions of the Hon'ble Karnataka High Court in the cases of Fatheraj Singhvi & Sree Ayyapa Educational Charitable Trust (supra), the late fee levied by the Assessing Officer is cancelled. Thus, the appeal filed by the assessee is allowed.

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

Order Pronounced in open Court on this 01st day of Feb., 2019.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated: 01st Feb., 2019.

vr/-

Copy to:

1. *The Assessee – Smt. Pavani Devi, M/s. N. Koteswara & Co.,
CA, D.No. 23-6-17/2, Patnam Bazar, Guntur.*
2. *The Revenue- ACIT, CPC (TDS), Ghaziabad.*
3. *The CIT (TDS), Vijayawada.*
4. *The CIT(A)-2, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.