

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND
Shri S.Rifaur Rahman, Accountant Member**

ITA Nos.1398 to 1400, 1497 and 1401 to 1403/Hyd/2018
(Assessment Years: 2013-14 & 2014-15)

M/s. Swarup Hospitals Private Limited, Hyderabad PAN: AAFCS3789L <i>(Appellant)</i>	Vs	Addl. Commissioner of Income Tax (TDS), Range-2 Hyderabad <i>(Respondent)</i>
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For Assessee :	Shri Laxminiwas Sharma
For Revenue :	Shri Phani Raju, DR

Date of Hearing:	06.02.2019
Date of Pronouncement:	15.02.2019

ORDER

Per Smt. P. Madhavi Devi, J.M.

All are assessee's appeals for the A.Ys 2013-14 & 2014-15 respectively against the order u/s 200A and section 154 of the I.T. Act respectively.

2. All these appeals are filed against the order of the CIT (A) confirming the late fee levied by the AO u/s 234E of the I.T. Act. The learned CIT (A) dismissed the appeals on the ground that the appeals were time barred. The assessee has now filed the appeals before us raising the following grounds:

"1. The learned CIT (A) has erred in facts and law while disposing off the appeal.

2. The learned CIT (A) has erred in facts and law while rejecting the reasons for condoning the delay in filing of an appeal and ignoring that the intimation passed

by the AO u/s 200A is barred by limitation as per proviso to section 200A of the I.T. Act.

3. The learned CIT (A) has erred in not adjudicating the issue on merit, whereby the provisions of section 234E are not applicable in case of an assessee while processing the TDS statements u/s 200A prior to 1.6.2015.

4. For these and any other grounds which may be raised on or before hearing of the appeal”.

3. Having heard both the parties and having considered the material on record, we find that the CIT (A) has refused to condone the delay even though the assessee's case is covered in favour of the assessee on merits. We find that the machinery provision u/s 200A has come into force w.e.f. 1.6.2015 and in a number of cases, the Coordinate Bench of this Tribunal has held that the said machinery provisions have come into effect only after 1.6.2015 and therefore, they cannot be applied to the earlier A.Ys. For the sake of ready reference, the relevant paras in the case of Terra Infra Development Ltd vs. ITO (TDS) Ward 2(3) Hyderabad in ITA Nos.1876 & 1875/Hyd/2017, dated 03.10.2018 are as under:

“We find that though the provisions for levy of fee in certain cases has been brought into the statute book w.e.f. 1.7.2012, it has been brought under the purview of section 200A only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra), we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior to 1.6.2015. Respectfully following the same, assessee's appeals for both the A.Ys are allowed”.

4. Respectfully following the same, we hold that the late fee is not leviable in the period prior to 1.6.2015 and therefore,

the issue is covered in favour of the assessee on the legal issue, we are inclined to condone the delay before the CIT (A) and hold the orders as void.

5. In the result, assessee's appeals are allowed.

Order pronounced in the Open Court on 15th February, 2019.

Sd/-
(S.Rifaur Rahman)
Accountant Member

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 15th February, 2019.

Vinodan/sps

Copy to:

- 1 M/s. Swarup Hospitals (P) Ltd, 6-3-347/9/1, Dwarakapuri Colony, Panjagutta, Hyderabad 500082
- 2 Addl. CIT, TDS Range-2 Hyderabad
- 3 CIT (A)-8 Hyderabad
- 4 CIT – TDS, Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order