

*IN THE INCOME TAX APPELLATE TRIBUNAL
RANCHI BENCH "SMC" RANCHI*

Before **Shri S.S, Godara, Judicial Member**

ITA No.21-24/Ran/2017
Assessment Year:2013-14

Shree Balaji Steel Works Marwari Para Road, Jugsalai, Jamshedpur-831006 [PAN No. ABBFS 3293 H]	<u>बनाम /</u> V/s.	ACIT, CPC, Gaziabad
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	None
राजस्व की ओर से/By Revenue	Shri Chandan Das, JCIT-DR

ITA No.250-251/Ran/2018
Assessment Year:2013-14 (Q4-26Q)(Q-3-24Q)

M/s Comprehensive Neomarketing System Pvt. Ltd. Rattanlall Surajmull Compound, C.N. Tower, 56- Main Road, Ranchi-834001 [PAN No. AA ECC 1221 E]	<u>बनाम /</u> V/s.	ACIT, Centrallised Processing Cell-TDS, Aayakar Bhawan, Sectoro-3, Vaishali, Ghaziabad, U.P. 201010
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

ITA No.252-255/Ran/2018
Assessment Year:2013-14 (Q2-26Q)(Q-2-24Q)
Assessment Year:2014-15 (Q2-26Q)(Q1-26Q)

C.N. Automobiles Rattanlall Surajmull Compound, C.N. Tower, 56- Main Road, Ranchi-834001 [PAN No. AAHFC 9438 P]	<u>बनाम /</u> V/s.	ACIT, Centrallised Processing Cell-TDS, Aayakar Bhawan, Sectoro-3, Vaishali, Ghaziabad, U.P. 201010

अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent
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ITA No.256-259/Ran/2018 Assessment Year:2013-14 (Q3-24Q)(Q-4-24Q) (Q4-26Q)

M/s Good Health Food Pvt. Ltd. Rattanlall Surajmull Compound, C.N. Tower, 56-Main Road, Ranchi-834001 [PAN No. AAACG 5287 E]	बनाम/ V/s.	ACIT, Centrallised Processing Cell-TDS, Aayakar Bhawan, Sectors-3, Vaishali, Ghaziabad, U.P. 201010
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri Devesh Poddar, Advocate
राजस्व की ओर से/By Revenue	Shri Chandan Das, JCIT-DR
सुनवाई की तारीख/Date of Hearing	11-01-2019
घोषणा की तारीख/Date of Pronouncement	15-02-2019

आदेश /O R D E R

These set of fourteen appeal(s) filed by the various assessees against the Commissioner of Income-tax (Appeals)-Jamshedpur & CIT(A)-Ranchi's separate order(s), challenges correctness of the lower authorities' action levying late fee involving proceedings u/s 243E of the Income Tax Act, 1961; in short 'the Act'.

2. I find that all these cases raise a common question of applicability of sec. 234E late fee before 01.06.2015 i.e. the relevant date of amendment in sec.200A of the Act, I therefore propose to decide all these cases vide its instant common order.

Heard all the assessees as well as Revenue. Case file(s) perused.

3. It transpires during the course of hearing that this tribunal's various decisions i.e. *Sibia Healthcare Pvt. Ltd. vs. DCIT* (2015) 121 DTR 81 (ASR) (Trib) and *G Indhirani vs. DCIT* (2015) 43 CCH 511 (Chen-Trib) hold that the impugned late filing fee does not apply in case of assessment year(s) prior to 01.06.2015 or it does not carry retrospective operation in other words. The CIT(A) in these all cases hold

that hon'ble Gujarat high court's decision in *Rajesh Kaurani vs. Union of India* 83 Taxmann.com 137 (Guj) confirms late fee levy u/s 234E to be with retrospective effect. The CIT(A) therefore appears to have gone by the hon'ble Gujarat high court's decision to affirm the Assessing Officer's action in all these cases. I notice in this backdrop of facts that this tribunal's yet another co-ordinate bench's decision in *State Bank of India vs. ITO (TDS)* ITA No.03, 06-07/Agr/2018 and other group cases decided on 31.05.2018 has considered hon'ble Gujarat high court's judgment to once again decide this very issue in assessee's favour as follows:

“4. Since a common issue is involved in all these appeals relating to levy of late filing fee u/s 234E of the Act, they are being disposed of by this consolidated order for the sake of convenience.

5. In these cases, the appellants have deposited TDS in Central Government account as per TDS provisions of the Act. They are required to file quarterly TDS returns (statements) intimating the tax deducted at source from various payments made to various persons in each quarters for the financial relevant. To ensure timely compliance on the part of the deductors, the provisions for late filing fee u/s 234E has been inserted in clause (c) to section 200A of the Act by the Finance Act, 2015, w.e.f 1.06.2015. Before the Id. CITCA), these appellants contended that before making necessary amendment in Section 200A of the Act w.e.f. 01.06.2015, there was no enabling provisions u/s 200A of the Act for raising demand in respect of levy of penalty u/s 234E of the Act and thus in the absence of enabling provision for making such adjustment for levying late fee u/s 234E, no sue; late fee could be imposed by the AO. In support, the counsel for the applicants placed reliance on the decision in the cases of *Sibia Healthcare Pvt. Ltd. Vs. DCIT (TDS)* (2015) 121 DTR 81 (ASR) (Trib) and *G Indhirani Vs. DCIT* (2015) 43 CCH 511 (Chen-Trib) wherein it was held that in the absence of enabling provisions u/s 200A of the Act, such levy of late fee is not valid. The Id. CIT(A) has rejected this contention of the appellants by relying on the decision in the case of *Rajesh Kaurani vs. Union of India*, 83 Taxmann.com 137(Guj) and confirmed the levy of late fee u/s 234E of the Act. Aggrieved, appellants are in appeal before us.

6. The counsel for the assessee has submitted a statement of TDS returns (APB, Pge. 5-9) contending that all the TDS returns statements has been filed are in respect of the period prior to the date 01.06.2015 i.e. the date from which clause (c) to sub Section (1) of Section 200A was inserted and incorporating Section 234E of the Act, 1961. He further submitted that prior 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E of the Act. The provision of Section 234E of the Act is charging provision i.e. substantive provision which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fee

for any delay in filing the TDS statement for the period prior to 01.06.2015.
For this purpose, the appellants rely on the following decisions:

- i) CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC).
- ii) Sudarshan Goyal vs DCIT (TDS)' ITA No.442/Agr/2017.
- iii) Fatehraj Singhvi Vs. UOI (2016) 289 CTR 0602 (Karn) (HC)
- iv) Sibia Healthcare Pvt. Ltd. Vs. DOT (TDS) ITA No.90/Asr/2015.
- v) Shri Kaur Chand Jain vs. DCIT', ITA No.378/ASR/2015.
- vi) Gajanan Constructions vs. DCIT' (2016) 161 ITD 313 (Pune).

7. Per contra, the Ld. DR supported the impugned order with the support of a brief synopsis of case laws.

8. Heard the rival contention and perused the material relevant. We find that while deciding the issue against the appellant assessee the Ld. CIT(A) has placed reliance on *Rajesh Kaurani vs. Union of India*, 83 Taxmann.com 137 (Guj.) wherein it was held that Section 200A of the Act is a machinery provision providing the mechanism for processing a TDS statement of deduction of tax at source and for making adjustment. The Ld. CIT(A) has further held that this decision was delivered after considering numerous ITAT and High Court decisions and therefore this decision in *Rajesh Kaurani* (Supra), holds the fields.

9. It is seen that prior 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E of the Act. The provision of Section 234E of the Act is charging provision i.e. substantive provision which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fee for any delay in filing the TDS statement for the period prior to 01.06.2015. The counsel for the assessee has rightly contended that in the absence of enabling provisions u/s 200A of the Act, such levy of late fee is not valid relying on the decisions in the cases of CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC), Sudarshan Goyal vs DCIT (TDS) **ITA No.442/Agr/2017** and Fatehraj Singhvi Vs. UOI (2016) 289 CTR 0602 (Karn) (HC). The decisions relied on by the Ld. DR are distinguishable on facts, as the issue involved in those cases pertains to interest u/s 201(1) and 201(1A) on the amount of TDS whereas in the present cases the issue were pertains to liability of late fee u/s 234E of the Act for delay in filing TDS statement which was inserted from 01.06.2015.

10. On similar facts; we have decided the same issue in the assessee's own case *Sudershan Goyal vs. DOT (TDS)* in **ITA No. 442/Agra/2017** dtd. 09.04.2018 authored by one of us (the Ld. J.M.). The relevant part of the order is reproduced as follows:

"3. Heard. The Id. CIT(A), while deciding the matter against the assessee, has placed reliance on '*Rajesh Kaurani vs. UOI*, 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of

the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The Id. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in Rajesh Kaurani' (supra) holds the field.

4. We do not find the view taken by the Id. CIT(A) to be correct in law. As against Rajesh Kaurani (supra), Shri Fatehraj Singhvi and Others vs. UOI, 73 Taxmann.com 252 (Ker), as also admitted by the Id. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the Id. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing Rajesh Kaurani (supra). However, while observing so, the Id. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In Shri Fatehraj Singhvi and Others' (supra) it has been held, inter alia, as follows:

"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. "

6. In view of the above, respectfully following Shri Fatehraj Singhvi and Others' (supra), Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

11. In the above view, respectfully following Shri Fatehraj Singhvi and Ors (Supra), Sibia Healthcare Pvt. Ltd. Vs. DCIT (Supra), 'Shri Kaur Oland Jain vs. DCIT', (Supra), and our own finding in the case of Sudershan Goyal (Supra), we accept the grievance of the assesseees as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under section 234E of the Act is cancelled.”

4. Learned Departmental Representative fails to indicate any distinction on facts or law during the course of hearing. I therefore accept all assessee's sole substantive ground raised in the instant batch of cases challenging correctness of sec. 234E late filing fee.

5. These assesseees' appeal(s) are allowed in above terms.

Order pronounced in accordance with Rule 34(4) of the ITAT Rules by putting on Notice Board on 15/02/2019

Sd/-
(S.S. Godara)
Judicial Member

Ranchi,

*Dkp/Sr.PS

दिनांक:- 15/02/2019 रांची

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Shree Balaji Steel Works Marwari Para Road, Jugsalai, Jamshedpur-831006/M/s Comprehensive Neomarketing System Pvt. Ltd./C.N. Automobiles/ M/s Good Health Food Pvt. Ltd. Rattanlall Surajmuill Compound, C.N.Tower, 56-Main Road Ranchi-834001
2. राजस्व/Revenue-ACIT, CPC, Gasziabad/ACIT, Centrallised Processing Cell-TDS Aayakar Bhawan, Sector-3, Vaishali, Ghaziabad, UP-201010
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण रांची / DR, ITAT, Ranchi
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary/P.S
आयकर अपीलीय अधिकरण, रांची ।