



IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.180/JAB/2018
Assessment Year:2013-14

| | | |
|---|----|-------------------------------|
| Shanti Lal Jain Prop. Jain Advertising Agency Arya Samaj Market Russel Chowk, Jabalpur | v. | DCIT CPC, TDS Ghaziabad |
| TAN/PAN:JBPSO6909A | | |
| (Appellant) | | (Respondent) |

| | | | |
|------------------------|---------------------------------|----|------|
| Appellant by: | Shri Anil Kumar Gupta, Advocate | | |
| Respondent by: | Shri P. D. Chougale, D.R. | | |
| Date of hearing: | 04 | 04 | 2019 |
| Date of pronouncement: | 04 | 04 | 2019 |

ORDER

PER A. D. JAIN, V.P.:

This is assessee's appeal against the order of the Id. CIT(A)-1, Jabalpur, dated 27/6/2018 for Assessment Year 2013-14, taking the following grounds:

- 1. On the facts and under the circumstances of the case, the learned CIT (A) has erred in passing the order ex-parte on 26/6/2018 while the counsel's junior had filed the application for adjournment on 21/6/2018 for extension of hearing for further 20 days but he passed the order on 26/6/2018 in undue haste.*
- 2. That the Id. A.O. (TDS-CPC) had wrongly levied a late fees of Rs.16,800/-and issued order u/s 200A of the Act.*
- 3. That the Id. A.O. has charged the late fee of Rs.16,800/-without sanction of law as subsection (3) of the section 234E of the Act states it shall be paid before delivering a TDS statement. It means that any late fees should have been deposited just at*

the time of delivering TDS statement and if TDS statement has been accepted than no late fee can be charged later.

4. That the Id. A.O. failed to understand that once the TDS statement has been accepted without late fees, then such late fee cannot be recovered later on. In view of above, late fee cannot be recovered later on by way of any notice, no notice of demand u/s 156 can be issued for this.

5. That the Id. A.O. has failed to understand that the provision of section 204 of the Act has made the person responsible for section 190 to 203AA and section 285, this phrase does not cover Section 234E, it means no one is responsible for default u/s 234E.

6. The Id. A.O. erred in passing the intimation u/s 200A of the Act which does not permit processing of TDS statement for default in payment of late fees, except any arithmetical error, or incorrect claim, or default in payment of interest and TDS payable or refundable etc. Hence, late fees for TDS quarterly statement cannot be recovered by way of processing u/s 200A. Therefore, no demand notice cannot be issued under this section.

Hence, the order u/s 200A imposing late fee u/s 234E has to be cancelled and quashed.

7. The Id. A.O. failed to understand that the act does not allow any assessing authority to pass an order u/s 234E of the Act, therefore, any recovery also cannot be made u/s 234E.

8. That the Id. A.O. passed the impugned order is without application of mind and the same is erroneous to law and in facts.

9. That the learned CIT (A) has allowed the appeal on the same grounds in the case of Om Sai Aakarsh Constructions, Jabalpur vide order dated 10/6/2016.

2. By virtue of the impugned order, the Id. CIT(A) has dismissed the assessee's appeal for non-prosecution. We take note that the Id. CIT(A) had issued only one notice, dated 8/6/2018. On this date, Id. A.R. of the assessee sought adjournment, accordingly the case was adjourned to 26/6/2018, but on this date, none appeared on behalf of

the assessee before the Id. CIT(A) and the Id. CIT(A) dismissed the appeal of the assessee ex-parte qua the assessee.

3. Heard. I find that the CIT(A) has dismissed the appeal without providing proper opportunity to the assessee. Moreover, he has not decided the appeal after discussing in detail, his reasons for agreeing with the assessment order. The assessee has taken a specific ground with regard to non-service of notice on the assessee. As such, another opportunity of hearing requires to be given to the assessee to represent his case fully before the Id. CIT(A). Even otherwise, it is trite [‘S. Velu Palandar Vs. DCIT’ 83 ITR 683 (Mad.)] and incumbent on the Id CIT(A) to decide an appeal on merit even in the absence of any representation before them.

4. In view of the above, the matter is remitted to the file of the Id. CIT(A) to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the fresh proceedings before the Id. CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

5. In the result, for statistical purposes, the appeal is treated as allowed.

Order pronounced in the open Court on 04/04/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:04/04/2019

JJ:0404

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR