IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.7473/DEL/2018
Assessment Year: 2015-16

District Health & Welfare Society, Ghanta Ghar Chowk, Civil Hospital, Bhiwani, Haryana.	v.	ITO, TDS, Hisar.
TAN/PAN: RTKD03741D		
(Appellant)		(Respondent)

Appellant by:	Shri Sachin Goyal, CA.		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	15	04	2019
Date of pronouncement:	26	04	2019

O R D E R

The aforesaid appeal has been filed by the assessee against the impugned order dated 13.09.2018 passed by the Commissioner of Income Tax (Appeals), Hisar in relation to order passed u/s.221 for the Assessment Year 2015-16. In the grounds of appeal, the assessee has challenged the levy of fee in terms of Section 200A for delay in filing of TDS return.

2. The Assessing Officer has issued notice u/s.221(1) against demand u/s.234E for the financial year 2014-15 on the ground that there was a delay in filing of the TDS return for three quarters and has levied fee u/s.234E of Rs.1,84,730/-.

3. Ld. CIT (A) too has held that Section 234E has been brought in statute w.e.f. 01.07.2012 and assessee's case

pertains to the year, during which Section 234E was effective and any demand raised u/s.234E is not appealable before ld. CIT(A). On merits, he has decided the issue and held that Hon'ble Rajasthan High Court in the case of **M/s. DundiodShikshanSansthan & ... v. Union of India and ors, dated 28th July, 2015** and also decision of Hon'ble Gujarat High Court in the case of **Rajesh Kourani v. Union of India (2017) 83 taxmann.com 137 (Guj.)**.

4. Before us, learned counsel has submitted that this issue is now squarely covered by the decision of Tribunal in the case of **Meghna Gupta vs. ACIT, (2018) 99 taxaman. Com 334 (Del. Tri)** wherein it has been held that a levy of fee u/s.234E as in terms of Section 200A is only applicable w.e.f. 01.06.2015 and here, it is prior to 31st March, 2015.

5. On the other hand, learned Department Representative strongly relied upon the order of ld. CIT (A).

6. After considering the submissions made by the parties and on perusal of the impugned order, it is seen that assessee has deposited the TDS deducted for the financial year 2015-16 in time. However, for the three quarters assessee could not submit the TDS return on time. The reason stated by the assessee was that the tax consultant had not submitted the return in time. The Assessing Officer has levied the fees u/s.234E, whereby if a person fails to file the TDS return on or before due date prescribed, then such an adjustment can be made only in terms of Section 200A. It was only by the Finance Act, 2015, w.e.f. 01.06.2015 amendment was brought u/s.200A, wherein levy of fee u/s.234E has been

prescribed. This precise issue has come up for consideration before this Tribunal in the case of **Meghna Gupta (supra)** wherein the Tribunal had observed and held as under:

> *"First of all, sub section 3 of section 200 provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:—*
>
> *"(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"*
>
> *6.1 Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A(4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. As stated above, the assessee has duly deposited the tax not at the time of purchase albeit on 5.4.2014 and. on the same date, statement has also been filed. The relevant provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the*

tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [20161 73 taxmann.com 252, wherein the lordship had made following observations:-—

"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made."

7. *Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled."*

7. Respectfully following the aforesaid decision, I hold that levy of fee u/s.234E cannot be levied on such kind of default

before 01.06.2015. Accordingly, appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 26th April, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 26th April, 2019
PKK: