

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA Nos.5463/Del/2017, 5464/Del/2017 & 5465/Del/2017
Assessment Years : 2013-14, 2014-15 & 2015-16

M/s Topline Buildtech
Pvt.Ltd.,
Flat No.104,
Lower Ground Floor,
Westend Marg, Said-UI-Ajaib,
New Delhi – 110 030.
PAN : AABCT5348L.
(Appellant)

Vs. Income Tax Officer,
Ward-76(4),
New Delhi.

(Respondent)

Appellant by : Shri Satyajit, CA.
Respondent by : Shri S.S. Rana, CIT-DR.

Date of hearing : 25.04.2019
Date of pronouncement : 07.05.2019

ORDER

PER BENCH :-

These appeals by the assessee for the assessment years 2013-14 to 2015-16 are directed against the order of learned CIT(A)-41, New Delhi dated 21st July, 2017.

2. In all these appeals, common grounds have been raised. Therefore, we reproduce herein below grounds raised for assessment year 2013-14 in ITA No.5463/Del/2017 :-

"1. (a) That the authorities below were not justified to reject application u/s 154/155 of the Income Tax Act for wrong levy of late fee u/s 234E read with Section 200A of the IT Act amounting to Rs.4,82,144/-.

(b) That the authorities below were not justified to sustain charge of late fee u/s 234E read with Section 200A of IT Act since the section 200A had come into effect from 01.06.2015 and levy of late fee u/s 234E was not permissible u/s 200A of the Income Tax Act prior to 01.06.2015.

2. That charge of late fee u/s 234E is illegal as the same is not in conformity with provision in existence at the relevant time.

3. That the assessee craves the right to add, amend, delete or substitute any ground of appeal.

4. That the order framed is against the facts of the case and bad in law."

3. At the time of hearing before us, the learned counsel for the assessee argued at length and he stated that the issue is squarely covered by the decision of ITAT, Delhi Bench in the case of J.D. Motor Finance Ltd. vide ITA No.2822/Del/2016. In this case, the ITAT held that the enabling provision under Section 200A of the Act for levy of penalty under Section 234E came into effect from 1st June, 2015 and therefore, the penalty cannot be levied for the default prior to the above date. He stated that while taking this view, the ITAT also relied upon the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi – (2016) 73 taxmann.com 252.

4. Learned CIT-DR, on the other hand, stated that in this case, the appeal has originated from the order under Section 154. The assessee, against the levy of penalty under Section 234E, had filed the rectification petition before the Assessing Officer which was rejected by him and from the said order, these appeals have come. Therefore, the precise question is whether there was an apparent mistake in the order of the Assessing Officer levying late fee under Section 234E. He further stated that Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. Union of India – (2017) 83 taxmann.com 137 have held

that Section 200A is a machinery provision providing mechanism for processing of statement of deduction of tax at source and for making adjustment. On the other hand, Section 234E is a charging provision creating charge for levy of fee for certain defaults in filing statements. Therefore, the late fee under Section 234E can be levied even for the period prior to coming into operation of Section 200A. He stated that the above decision of Hon'ble High Court squarely covers the case of the assessee in favour of the Revenue. He alternatively submitted that, at the most, it is now a debatable issue because at one hand there is a decision of Hon'ble Gujarat High Court and, on the other hand, there is a decision of Hon'ble Karnataka High Court and, once the issue is a debatable one, it is out of the purview of rectification under Section 154.

5. We have carefully considered the arguments of both the sides and perused the material placed before us. We entirely agree with the contention of the learned DR that it is a debatable issue because there are contrary decisions – one by Hon'ble Gujarat High Court in the case of Rajesh Kourani (supra) in favour of the Revenue and the other of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra) in favour of the assessee. It is a settled law that a debatable issue cannot be rectified under Section 154 of the Act. In view of the above, we uphold the order of learned CIT(A) and dismiss the appeals filed by the assessee.

6. In the result, all the appeals of the assessee are dismissed.

Decision pronounced in the open Court on 07.05.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : **M/s Topline Buildtech Pvt.Ltd.,
Flat No.104, Lower Ground Floor,
Westend Marg, Said-Ul-Ajaib,
New Delhi – 110 030.**
2. Respondent : **Income Tax Officer, Ward-76(4), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar