

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

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

I.T.A. No. 2322/DEL/2016 (A.Y 2014-15)

I.T.A. No. 2323/DEL/2016 (A.Y 2014-15)

Kam Air Co. Ltd. 1-84B, Ground Floor, Lajpat Nagar-II New Delhi AADCK0451D (APPELLANT)	Vs	DCIT CPC-(TDS) Ghaziabad (RESPONDENT)
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Appellant by	None
Respondent by	Sh. N. K. Bansal, Sr. DR

Date of Hearing	02.04.2019
Date of Pronouncement	07.05.2019

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the order dated 25/01/2016 passed by CIT-41, New Delhi for Assessment Year 2014-15. As relates to 3rd Quarter Form 26 Q for Financial Year 2013-14.

2. The grounds of appeal are as under:- **I.T.A. No. 2322/DEL/2016**

1. *“That the appellate order as passed by the Ld. CIT (Appeals) is bad in law and contrary to the fact of the case.*
2. *That the Ld. CIT (A) has erred in law and facts of the case by confirming the addition of Rs. 48,800/- on account of late filing of TDS Return.*

3. *That the levy of fee under section 234E of the Act being unjust, arbitrary, discriminatory, without the authority of Law, is violative of Article 14, Article 19(l)(g), Article 265 and Article 300A of the Constitution of India, and causes irreparable loss to the appellant.*
4. *That the charge of late filing under section 234E of the Act in the garb of a 'fee' is nothing but a shadow-penalty for the delay in the filing the statement under section 200(3) of the Act. Section 271H(l)(a) of the Act, already seeks to levy a penalty for very same 'offence'. It is settled Law that an assessee cannot be penalized twice for the very same cause of action for the very same Assessment year. The levy of a 'fee'¹ under section 234E of the Act is therefore illegal and contrary to settled judicial precedents, and is therefore liable to be deleted.*
5. *That without prejudice to the above submission, it is submitted that on the facts and circumstances of the case, the appellant company was prevented by sufficient cause for delay in submitting the statement u/s 200(3) of the Income Tax Act, 1961 and it is prayed that the fee imposed at Rs 48,800/- u/s 234E of Income Tax Act kindly be deleted.*
6. *The appellants further craves leave to rely upon and produce additional documents and make further submissions, during the course of hearing.”*

I.T.A. No. 2323/DEL/2016

“1. That the appellate order as passed by the Ld. CIT (Appeals) is bad in law and contrary to the fact of the case.

2. That the Ld. CIT (A) has erred in law and facts of the case by confirming the addition of Rs. 88,760/- on account of late filing of TDS Return.

3. That the levy of fee under section 234E of the Act being unjust, arbitrary, discriminatory, without the authority of Law, is violative of Article 14, Article 19(l)(g), Article 265 and Article 300A of the Constitution of India, and causes irreparable loss to the appellant.

4. That the charge of late filing under section 234E of the Act in the garb of a 'fee' is nothing but a shadow-penalty for the delay in the filing the statement under section 200(3) of the Act. Section 271H(l)(a) of the Act, already seeks to levy a penalty for very same 'offence'. It is settled Law that an assessee cannot be penalized twice for the very same cause of action for the very same Assessment year. The levy of a 'fee' under section 234E of the Act is therefore illegal and contrary to settled judicial precedents, and is therefore liable to be deleted.

5. That without prejudice to the above submission, it is submitted that on the facts and circumstances of the case, the appellant company was prevented by sufficient cause for delay in submitting the statement u/s 200(3) of the Income Tax Act, 1961 and it is prayed that the fee imposed at Rs 88,760/- u/s 234E of Income Tax Act kindly be deleted.

6. The appellants further craves leave to rely upon and produce additional documents and make further submissions, during the course of hearing.”

3. At the time of hearing, the assessee has not appeared neither there was any adjournment application despite notice has been served on 7/3/2019. Therefore, we are taking up the matter from the records, it can be seen that the issue involved in the present appeal is relating to levy of late filing fees u/s 234E of the Income Tax Act, for delay in filing of TDS statement as per intimation u/s 200A of the Income Tax Act. The CIT (A) while deciding the appeal of the assessee dismissed the appeal of the assessee

4. The Ld. DR relied upon the order of the CIT(A) and submitted that the levy of late filing fees u/s 234E has been properly levied by the Assessing Officer.

5. We have heard the Ld. DR and perused the material available on record. We have gone through The submissions of the revenue and also that of the submissions of the assessee before the CIT(A). The assessee before the CIT(A) submitted that the amendment in Section 200(A) (1) from Clause (C) to (e) has been made for the first time enabling the Assessing Officer to make adjustment by levying fees u/s 234E of the Act w.e.f. 1/6/2015. This aspect was not dealt by the CIT(A) instead only relied upon the decisions which has not dealt with the amended position of Section 200A and effective date of amendment. It is pertinent to note that on this issue, there are contrary views – one by Hon'ble Gujarat High Court in case of Rajesh Kourani vs. Union of India (2017) 83 taxmann.com 137 in favour of revenue, and the other of the Hon'ble Karnataka High Court in case of Fatheraj Singhvi (2016) 73 taxmann.com 252 in favour of the assessee. It is settled law that when two views are possible, the view in favour of the assessee is to be adopted. Therefore, following the decision of the Hon'ble Karnataka High Court in case of Fatheraj Singhvi (supra), we hold that the levy of fee under Section 234E prior to 1st June, 2015 was not sustainable. Accordingly, we delete the penalty order

and allow the appeals of the assessee as both the appeals are on identical facts.

6. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 07th May, 2019.

Sd/-

**(G. D. AGRAWAL)
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 07/05/2019

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	02.04.2019
Date on which the typed draft is placed before the dictating Member	02.04.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	07.05.2019
Date on which the final order is uploaded on the website of ITAT	07.05.2019
Date on which the file goes to the Bench Clerk	07.05.2019
Date on which the file goes to the Head Clerk	