

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

S. No.	ITA No.	AY	Appellant	Respondent
1	2348, 2349 & 2350/H/18	2013-14, 2014-15 & 2015-16	Sony Transport Solutions, Hyderabad. PAN – ABLFS 5686A	Income-tax Officer (TDS), Ward – 2 (2), Hyderabad

Assessee by : Shri A.V. Raghuram
Revenue by : Shri Dinesh Paduchuri

Date of hearing : 15/05/2019
Date of pronouncement : 12/06/2019

ORDER

PER S. RIFAUR RAHMAN, A.M.:

All these appeals filed by assessee are directed against a common order of CIT(A) – 8, Hyderabad, dated, 10/10/2018 for AYs 2013-14 to 2015-16. As identical issue is involved in these appeals, the same were clubbed and heard together and, therefore, a common order is passed for the sake of convenience.

2. Brief facts of the case are, the assessee company filed its statements in Forms 24Q and 26Q for all quarters for FYs 2012-13 to 2014-15 relevant to AYs 2013-14 to 2015-16. On verification of these statements, the AO noticed that the assessee filed all these statements, belatedly and hence, raised a demand in all the said FYs on account of late filing levy u/s 234E by issuing intimations u/s 200A.

3. Against the said action of AO, assessee preferred appeals before the CIT(A) raising a ground that the provisions to include late

fee u/s 234E in 'Intimation u/s 200A is not permissible under law and consequently such levy is unsustainable in law and hence the levy is liable to be deleted.

4. Before the CIT(A), the AR of the assessee contended that the provisions to include late fee u/s 234E in the intimation u/s 200A of the Act came into effect only through the Finance Act, 2015 w.e.f. 01/06/2015 and, hence, prior to 01/06/2015 such inclusion of late fee u/s 234E in the intimation u/s 200A is not permissible under the law. For this contention, he relied on various case law, which were extracted by the CIT(A) at page 2 of his order.

5. After considering the submissions of the assessee, the CIT(A) relying on the judgement of Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. UOI, [2017] 83 Taxmann.com 137 confirmed the late filing levy u/s 234E by the ACIT CPOC TDS.

6. Aggrieved by the orders of CIT(A), the assessee preferred appeals before us raising the following grounds of appeal, which are common in all the appeals under consideration, except the quantum of penalty:

"1. The order of the-learned CIT(Appeals) confirming the order of the AO is erroneous both on facts and in law in so far as it is prejudicial to the assessee.

2. The learned CIT(A) erred in confirming "the penalty of Rs.1,72,000 levied u/s. 234E by the AO, in spite of decision of Supreme Court that when two views are possible the view that favours the assessee should be followed as there are decisions of other courts wherein levy of penalty u/s.234E was deleted."

7. Considered the rival submissions and perused the material on record. We find that similar issue came up for consideration before the coordinate bench of this Tribunal in the case of M/s Terra Infra Development Ltd., Hyderabad in ITA Nos. 1876 & 1875/Hyd/2017 for

AYs 2013-14 and 2014-15, order dated 03/10/2018 (wherein both the Members are party), wherein the coordinate bench has held as under:

4. We find that though the provisions for levy of fee in certain cases has been brought into the Statute book w.e.f. 1.7.2012, it has been brought under the purview of [section 200A](#) only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra) we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior to 1.6.2015. For the sake of ready reference, the relevant para is reproduced hereunder:

"10. Now coming to the merits of the case, we find force in the argument of the learned Counsel for the assessee that prior to 01.06.2015, there was no mandate, as per the Statute, to make any adjustment on account of levy of fees u/s 234E while processing TDS returns u/s 200A. We have taken note of the order of the Hon'ble Gujarat High Court holding the amendment made to [section 200A](#) w.e.f. 01.06.2015, giving power to make adjustment on account of fees u/s 234E while processing returns u/s 200A to be retrospective in nature, stating that this power given to the AO is a machinery provision while the substantive provision of the power to levy fees u/s 234E was always there on the Statute from 01.06.2012. But at the same time, we note that the Hon'ble Karnataka High Court held that levy of fees u/s 234E while processing returns, TDS u/s 200A prior to 01.06.2015 was without any authority of law. With two divergent view of the Hon'ble High Courts on the issue and in the absence of any decision by the jurisdictional High Court, we concur with the learned Counsel for the assessee that as per the well accepted rule of construction, if two reasonable constructions of a statute are possible the construction which favours the assessee must be adopted. In view of the same, respectfully following the decision of the Karnataka High Court in the case of Fatheraj Singhvi (Supra), we hold that the fees levied in all the present cases u/s 234E prior to 01.06.2015 in the intimations made u/s 200A was without authority of law and the same is therefore, directed to be deleted. In view of the above, all the appeals of the assessee stand allowed".

5. Respectfully following the same, assessee's appeals for both the A.Ys are allowed."

7.1 In the case under consideration, on perusal of record, we find that the TDS returns filed by the assessee for the relevant period i.e., FYs 2012-13 to 2014-15 and 1st Quarter i.e. 01/04/2015 to 31/05/2015 were prior to 01/06/2015. Therefore, respectfully following the said decision of the coordinate bench, we set aside the order of CIT(A) and direct the AO to delete the fees levied u/s 234E.

8. In the result, the appeals for AYs 2013-14, 2014-15 & 2015-16 are allowed.

Pronounced in the open Court on 12th June, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 12th June, 2019.

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Copy to:-

- 1) *Sony Transport Solutions, C/o S/Shri K. Vasantkumar, AV Raghuram, P. Vinod & M. Neelima Devi, Advocates, 610, Babukhan Estate, Basheerbagh, Hyderabad – 500 001.*
- 2) *ITO (TDS), Ward – 2(2), Hyderabad.*
- 3) *CIT(A) – 8, Hyderabad.*
- 4) *CIT (TDS), Hyd.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File*