IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai

Before Shri Shamim Yahya, Accountant Member
and Shri Ravish Sood, Judicial Member

ITA No.5173/Mum/2017
(Assessment Year: 2015-16)

Dayanand Vaidik Vidyalalya Sanchalak Samiti. A-11-5, Marigold CHS, Devidayal Road, Mulund West, Mumbai – 400 080	Vs.	ACIT-(TDS)-CPC Aayakar Bhavan, Sector 3, Vaishali, Ghaziabad, Uttar Pradesh- 201010
PAN – AAATD7310G		
(Appellant)		**(Respondent)**

Appellant by: Shri Devendra Jain, A.R
Respondent by: Shri D.G. Pansari, D.R
Date of Hearing: 18.06.2019
Date of Pronouncement: 26.06.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-59, Mumbai, dated 11.05.2017, which in turn arises from the intimation under Sec.200A of the Act, dated 01.09.2015 passed by the ACIT-(TDS)–CPC. The assessee has assailed the order of the CIT(A) by raising the following grounds of appeal:

"1. In the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in directing the TDS Officer to charge interest u/s 201(1A) of the act till the date of filing of return of income and not till the

date of payment of tax by the deductees, disregarding the law laid down by the Hon'ble Supreme Court in:

"Hindustan Coca Cola Beverage Pvt. Ltd. v. CIT (2007) 163 Taxman 355 &

CIT v. Pranoy Roy (2009) 309 ITR 231 (SC)"

2. In the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the levy of fees u/s 234E of Rs. 21,200/- in respect of period prior to 01.06.2005, without any enabling provision in section 200A."

2. Briefly stated, on account of short deduction of tax at source for the fourth quarter of the financial year 2014-15 (Form No. 24Q), a demand of Rs.2,27,128/- was raised on the basis of an intimation issued by the department under Sec.200A of the Act, dated 01.09.2015. Further, as per the aforesaid intimation, dated 01.09.015, a demand under Sec.201(1A) of Rs.13,554/- was raised in the hands of the assessee. Apart there from, late filing fee under Sec.234E of Rs.21,200/- was also charged as per the said intimation.

3. The issue involved in the present appeal filed by the assessee revolves around two aspects viz. (i) quantification of the interest liability under Sec.201(1A); and (iii) sustainability of the levy of fees under Sec.234E of Rs.21,200/-.

4. It is the claim of the ld. A.R, that the CIT(A) had wrongly held that the interest on short deduction of TDS under Sec.201(1A) was to be reckoned from the date on which tax was first deductible by the assessee, till the date of filing of the return of income by the recipient-deductee. It is averred by the ld. A.R, that as per the mandate of law, the interest under Sec. 201(1A) is to be reckoned from the date on which tax was first deductible by the assessee, till the date of payment of taxes by the deductee. We have given a thoughtful consideration to the aforesaid issue before us and find substantial force in the contention advanced by

the ld. A.R. On a perusal of Sec.201(1A), it can safely be gathered that in case of short deduction of tax at source, the levy of interest under the said statutory provision is to be reckoned from the date on which such tax was deducted, till the date on which such tax is actually paid. Apart there from, we find that the aforesaid issue is no more *res-integra* in light of the judgment of the **Hon'ble Supreme Court** in the case of **Hindustan Coca Cola Beverages (P) Ltd. Vs. CIT (2007) 163 Taxman 355 (SC).** In the aforementioned case, it was observed by the Hon'ble Apex Court that liability to charge interest under Sec.201(1A) of the Act continues till the date of payment of taxes by the deductee. Accordingly, on the basis of our aforesaid observations, we are of the considered view that the levy of interest under Sec.201(1A) by the A.O in the case before us is to be reckoned till the date of the payment of such tax by the deductee, and not up to the date of filing of the return of income by the latter. The matter is restored to the file of the A.O, with a direction to re-determine the interest liability of the assessee under Sec.201(1A) of the Act in terms of our aforesaid observations. The **Ground of appeal No. 1** raised by the assessee is allowed.

5. We shall now advert to the contention of the assessee, that the CIT(A) has erred in upholding the late fees of Rs.21,200/- that was levied by the A.O under Sec.234E of the Act. It is the case of the assessee before us, that as the TDS statement is for the period prior to 01.06.2015, hence no late fees could have been charged for the said period while furnishing the statement under Sec.200A of the Act. We find that the aforesaid issue is squarely covered by the order of the coordinate bench of the **ITAT, Amritsar** in the case of **M/s GNA Udyog Ltd. Vs.**

ACIT (ITA No.126 to 133/ASR/2017, dated 15.01.2019) for A.Y. 2015-16, wherein it was observed as under:

> "6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the records that the assessee had delayed filing of the statements of tax deduction at source in Forms 26Q/27EQ for all the four quarters relevant to assessment year 2015-16. On a perusal of the records, it stands revealed that all of the statements of tax deduction at source were filed by the assessee on 22.09.2015 and the same had thereafter been processed under Sec.200A of the I.T Act on 26.09.2015 and 04.10.2015, as per the details tabulated hereinabove, We find that the Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi & Ors. Vs. Union of India (2016) 289 CTR 602 (Kar.) had concluded that the notice under Sec.200A of the I.T. Act computing fee under Sec.234E, to the extent the same related to the period of the tax deducted prior to 01.06.2015 was liable to be set aside. The aforesaid judgment of the Hon'ble High Court of Karnataka had thereafter been relied upon by the ITAT, Chandigarh in the case of Sonalac Paints & Coatings Ltd. Vs. DCIT (2018) 167 DTR 83 (Chd.). In the aforesaid case it was observed by the Tribunal that levy of fees under Sec.234E while processing the TDS returns under Sec.200A prior to 01.06.2015 was without any authority of law. On the basis of its aforesaid observations, the Tribunal had concluded that the fees levied under Sec.234E prior to 01.06.2015 in the intimations made under Sec. 200A was without authority of law, and as such the fees therein levied was liable to be deleted. Apart therefrom, we find that the issue involved in the appeal before us is also covered by an order of the ITAT, Amritsar in the case of Tata Rice Mills Vs. ACIT (CPC), TDS Ghaziabad (ITA No. 395/ASR/2016; dated 25.10.2017. In the aforementioned case, it was observed by the Tribunal that the assessee had filed its statement of tax deduction at source for the 'second quarter' relevant to Financial year 2014-15 on 19th June, 2015, which was thereafter processed on 23.06.2015 by the ACIT-TDS, CPC and a late fee under Sec. 234E of Rs. 49,400/- was charged in the intimation issued under Sec. 200A of the I.T. Act. It was observed by the Tribunal that as the amendment made under Sec.200A was effective from 01.06.2015 and applicable prospectively, hence no computation of fee under Sec.234E could be made for the TDS deducted prior to 01.06.2015.
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> 7. We have given a thoughtful consideration to the issue before us and finding ourselves as being in agreement with the view taken by the Tribunal in the case of Tata Rice Mills (supra), hence are of the considered view that the ACIT-TDS, CPC Ghaziabad in the case before us had erred in levying fees under Sec.234E in respect of tax deducted at source for the four quarters prior to 01.06.2015 in respect of A.Y. 2015-16. We thus not being persuaded to subscribe to the view taken by the CIT(A) who had upheld the levy of fees by the A.O, thus set aside his order and vacate the demand raised by the A.O under Sec.234E in the hands of the assessee for all the four quarters for the year under consideration."

In the aforementioned case, the Tribunal after considering the judgment of the **Hon'ble High Court of Karnataka** in the case of **Fatheraj Singhavi Vs. Union of India (2016) 289 CTR 602 (Karnataka),** had concluded, that levy of fees under Sec.234E could not be made in

purported exercise of power under Sec.200A by the revenue, for the period of the assessment year prior to 01.06.2015. Apart there from, we find that a similar view had also been taken by the **ITAT, Agra Bench, Agra** in the case of **M/s Yasoda Grah Nirman Sahkari Sanstha Maryadit Vs. ITO (TPJ) City Centre, Gwalior (ITA No. 467/Agr/2017, dated 23.05.2018).** Accordingly, in terms of our aforesaid observations, we are of the considered view that the CIT(A) had erred in upholding the levy of fees under Sec.234E of Rs.21,200/- in the case of the present assessee. The **Ground of appeal No. 2** raised by the assessee is allowed.

6. The appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 26.06.2019

Sd/-	Sd/-
(Shamim Yahya) ACCOUNTANT MEMBER	(Ravish Sood) JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 26.06.2019
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**