

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ, राँची
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, RANCHI

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

आयकर अपील सं./ITA No.50 to 54/RAN/2018

Assessment Year: 2013-2014(Q-2-26Q)

Assessment Year: 2013-2014(Q-3-26Q)

Assessment Year: 2013-2014(Q-4-26Q)

Assessment Year: 2014-2015(Q-2-26Q)

Assessment Year: 2014-2015(Q-1-26Q)

M/s Pramod Kumar Manpuria C/o Modern Funishers Sujata Chow, Main Road, Ranchi-834001 C/o L.K.Saraf & Co. Chartered Accountants, 2 nd Floor, Chauhan Mansion, Lalji Hirji Road, Ranchi-834001	Vs.	DCIT, CPC(TDS), Ghaziabad, UP
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACNPM 3796 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Saket Modi, FCA

राजस्व की ओर से /Revenue by : Shri P.K.Mondal, ACIT(DR)

सुनवाई की तारीख / Date of Hearing : **24/05/2019**

घोषणा की तारीख/Date of Pronouncement **24/05/2019**

आदेश / O R D E R

These appeals have been filed by the assessee against the common order of Commissioner of Income Tax (Appeals), Ranchi, all dated 31.10.2017 for the A.Y. 2013-2014(Q-2-26Q), A.Y. 2013-2014(Q-3-26Q), A.Y. 2013-2014(Q-4-26Q), A.Y. 2014-2015(Q-2-26Q) and A.Y. 2014-2015(Q-1-26Q), respectively.

2. The common grievance of the assessee in all the appeals is that the CIT(A) has erred in dismissing the assessee's appeal in respect of levy of late fee u/s.234E of the Act.

3. Brief facts of the case are that in all the above appeals under consideration, admittedly there was a delay in filing of TDS statement and during the processing of TDS return, the AO(TDS) raised demand by way of intimations issued u/s.200 A of the Act for levy of fees u/s.234E for delayed filing of TDS statement for Quarter-2 (A.Y. 2013-2014), Quarter-3 (A.Y. 2013-2014), Quarter-4 (A.Y. 2013-2014), Quarter-2 (A.Y. 2014-2015) and Quarter-1 (A.Y. 2014-2015), respectively and passed order dated 10.01.2014 and 16.09.2014. Against, which the assessee preferred appeal before the CIT(A). However, the CIT(A) relying on the decision of Hon'ble Gujarat High Court in the case of Ramesh Kaurani Vs. Union of India, [2017] 249 Taxmann 402 dismissed the appeal of the assessee holding that the late fee has correctly been levied for certain defaults in filing the statements.

4. Now, the assessee is in further appeals before the Tribunal.

5. Ld. AR, at the outset, submitted that the amendment brought in the Finance Act 2015 w.e.f.01.06.2015 in Section 200A of the Income Tax Act, 1961 is prospective in nature, therefore, no computation of late fee or demand or intimation u/s.234E of the Act could be made for TDS deducted in respective statements prior to 01.06.2015 and processed u/s.200A of the Act. Further, the ld. AR relied on the order of coordinate bench of the Tribunal in the case of State Bank of India, Gwalior Vs. CIT(A), ITA No.442/Ag/2018, order dated 09.04.2018, wherein the Tribunal has decided the issue in favour of the assessee by following the

decision in the case of Sudershan Goyal Vs. DCIT(TDS), ITA No.442/Agra/2017, order dated 09.04.2018. Ld. AR further placed reliance on the decision of the Amritsar Bench of the Tribunal in the case of Sibia Healthcare Pvt. Ltd. Vs. DCIT(TDS), [2015] 171 TTJ 0145(Asr) and submitted that the levy of fees u/s.234E of the Act in all the cases of the assessee, is not sustainable.

6. On contrary, Id. DR relied on the orders of lower authorities.

7. I have heard rival submissions of both the parties and perused the material available on the record of the Tribunal along with the judicial pronouncement placed by the Id. AR of the assessee. I find that in all the three cases late fees for filing the statement has been levied u/s.234E of the Act by the tax authorities. However, in respect of TDS statement filed for a period prior to 01.06.2015, no late fee could be levied in the intimation issued u/s.200A of the Act. I am also in agreement with the contention of the Id. AR that the amendment brought in the Finance Act 2015 w.e.f.01.06.2015 in Section 200A of the Income Tax Act, 1961 is prospective in nature, therefore, no computation of late fee or demand or intimation u/s.234E of the Act could be made for TDS deducted in respective statements prior to 01.06.2015 and processed u/s.200A of the Act. I have also gone through the decision of coordinate bench of the Tribunal placed by the Id. AR of the assessee in the case of State Bank of India, Gwalior Vs. CIT(A), ITA No.442/Ag/2018, order dated 09.04.2018, wherein the Tribunal in para 13 has held as under :-

“8. Heard the rival contention and perused the material relevant. We find that while deciding the issue against the appellant assessee the

Id. CIT(A) has placed reliance on '[Rajesh Kaurani vs. Union of India](#)', 83 Taxmann.com 137 (Guj.) wherein it was held that [Section 200A](#) of the Act is a machinery provision providing the mechanism for processing a TDS statement of deduction of tax at source and for making adjustment. The Ld. CIT(A) has further held that this decision was delivered after considering numerous ITAT and High Court decisions and therefore this decision in '[Rajesh Kaurani](#)' (Supra), holds the fields.

9. It is seen that prior 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E of the Act. The provision of [Section 234E](#) of the Act is charging provision i.e. substantive provision which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fee for any delay in filing the TDS statement for the period prior to 01.06.2015. The counsel for the assessee has rightly contended that in the absence of enabling provisions u/s 200A of the Act, such levy of late fee is not valid relying on Group of SBI and Ors.

The decisions in the cases of '[CIT vs. Vatika Township Pvt. Ltd.](#) (2014) 367 ITR 466 (SC), '[Sudarshan Goyal vs DCIT \(TDS\)](#)' ITA No.442/Agr/2017 and [Fatehraj Singhvi Vs. UOI](#) (2016) 289 CTR 0602 (Karn) (HC). The decisions relied on by the Ld. DR are distinguishable on facts, as the issue involved in those cases pertains to interest u/s 201(1) and 201(1A) on the amount of TDS whereas in the present cases the issue were pertains to liability of late fee u/s 234E of the Act for delay in filing TDS statement which was inserted from 01.06.2015.

10. On similar facts, we have decided the same issue in the assessee's own case '[Sudershan Goyal vs. DCIT \(TDS\)](#)', in ITA No. 442/Agra/2017 dtd. 09.04.2018 authored by one of us (the Ld. J.M.). The relevant part of the order is reproduced as follows:

"3. Heard. The Id. CIT(A), while deciding the matter against the assessee, has placed reliance on '[Rajesh Kaurani vs. UOI](#)', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The Id. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in '[Rajesh Kaurani](#)' (supra) holds the field.

4. We do not find the view taken by the Id. CIT(A) to be correct in law. As against '[Rajesh Kaurani](#)' (supra), '[Shri Group of SBI and Ors. Fatehraj Singhvi and Others vs.UOI](#)', 73 Taxmann.com 252 (Ker), as also admitted by the Id. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the Id. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing '[Rajesh Kaurani](#)' (supra). However, while observing so, the Id.

CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In 'Shri Fatehraj Singhvi and Others' (supra) it has been held, *inter alia*, as follows:

"22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the Group of SBI and Ors. Deductor to reopen the said question unless he has made payment under protest."

6. In view of the above, respectfully following 'Shri Fatehraj Singhvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

11. In the above view, respectfully following 'Shri Fatehraj Singhvi and Ors' (Supra), 'Sibia Healthcare Pvt. Ltd. Vs. DCIT (Supra)', 'Shri Kaur Chand Jain vs. DCIT', (Supra), and our own finding in the case of 'Sudershan Goyal' (Supra), we accept the grievance of the assessee as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under [section 234E](#) of the Act is cancelled."

8. On perusal of the appellate order, I find that the CIT(A) has relied on the decision of Hon'ble Gujarat High Court in the case of Rajesh Kaurani (supra), which is against the assessee. However, if there is a

cleavage of opinion between different Courts on an issue the one in favour of the assessee needs to be followed in view of the decision of Hon'ble Supreme Court in the case of CIT Vs. Vegetable Products Ltd., 88 ITR 192 (SC).

9. I take note that the facts of the aforesaid case and the facts before me are similar. Only after 01.06.2015, the AO can levy fee under section 234E of the Act while processing the statement under section 200A of the Act and not before. This view is also supported by the decision of Hon'ble Karnataka High Court in the case of Fatehraj Singhvi v. Union of India (289 CTR 0602), wherein the Hon'ble High Court at para 27 has held as under :-

“27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.”

Respectfully, following the above judicial pronouncements, the impugned intimation of the lower authorities levying fee under section 234E of the Act cannot be sustained in law. Accordingly the intimation under section 200A of the Act as confirmed by the Ld. CIT(A) in so far as levy of fee under section 234E of the Act is set aside and fee levied u/s 243E of the Act in all the appeals i.e. Rs.57,600/- for Quarter-2 (A.Y. 2013-2014), Rs.39,200/- Quarter-3 (A.Y. 2013-2014), Rs.15,200/- for

Quarter-4 (A.Y. 2013-2014), Rs.7.200/- for Quarter-2 (A.Y. 2014-2015) and Rs.25,600 for Quarter-1 (A.Y. 2014-2015), respectively, are ordered to be deleted. However, the other adjustments made by the AO in the impugned intimation shall stand as such. I order accordingly.

10. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 24/05/2019.

Sd/-
(CHANDRA MOHAN GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

राँची Ranchi; दिनांक Dated 24/05/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .
M/s Pramod Kumar Manpuria
C/o Modern Finishers
Sujata Chow, Main Road,
Ranchi-834001 C/o L.K.Saraf & Co. Chartered
Accountants, 2nd Floor, Chauhan Mansion,
Lalji Hirji Road, Ranchi-834001
2. प्रत्यर्थी / The Respondent-
DCIT, CPC(TDS), Ghaziabad, UP
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राँची / DR, ITAT, Ranchi
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, राँची / ITAT, Ranchi