

IN THE INCOME TAX APPELLATE TRIBUNAL "C"
BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.6436 to 6442/Mum/2018
(निर्धारण वर्ष / Assessment Years: 2015-16)

Permanent Magnets Ltd. C/o Jayesh Sanghrajka & Co LLP Chartered Accountants Unit No. 405, Hind Rajasthan Centre, D.S. Phalke Road, Dadar (E), Mumbai-400014.	<u>बनाम/</u> Vs.	DCIT-CPC (TDS) TDS CPC, Aayakar Bhawan Sector-3, Vaishali Nagar, Ghaziabad.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACP2231M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Manasvi Chheda (AR)	
Revenue by:	Shri Mallikarjun Utture (DR)	

सुनवाई की तारीख / Date of Hearing: 05/08/2019
घोषणा की तारीख /Date of Pronouncement: 07/08/2019

आदेश / ORDER

PER BENCH:

The above mentioned appeals have been filed by the assessee against the order dated 06.08.2018 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2015-16. Since the common question of law and facts are involved in the present appeal, therefore, all the appeals are taken up together for adjudication.

2. The assessee has raised the following grounds: -

- “1. On the given facts, circumstances, ad judicial pronouncements Hon. CIT(A) erred in upholding the order of Ld. AO of levying late filing fee under section 234E, such confirmation of penalty is bad in law and liable to be deleted.
2. on the given facts circumstances, and judicial pronouncements Hon. CIT(A) erred in confirmation the penalty for late filing under section 234E, for a period relating to financial year 2014-15, even though no power was conferred on the AO as per provisions of Section 200A, hence levy of such fee/penalty is without jurisdiction and bad in law and liable to be deleted.
3. the appellant prays to add, amend and alter or delete all or any of the above mentioned grounds of appeal.”

3. The brief facts of the case are that the assessee filed its quarterly TDS statement in Form No. 24Q (1st, 2nd and 3rd quarter) and 26Q(1st, 2nd, 3rd and 4th quarters) late for which the DCIT, CPC (TDS), Ghaziabad, UP had imposed late filing fee and penalty as per details mentioned below:-

FORM	F Yr	QTR	DUE DATE	DATE OF FILLING	DELAY DAYS	Amt of LATE FEE	Penalty u/s 234E (in Rs.)	Total amount (in Rs.)
24Q	2014-15	1	15.07.14	20.11.2014	128	Rs. 8,660	25,600	34,260
24Q	2014-15	2	15.10.14	20.11.2014	35	Rs. 8,450	7,000	15,450
24Q	2014-15	3	15.01.15	19.1.2015	4	--	800	800
26Q	2014-15	1	15.07.14	20.11.2014	128	Rs. 7,920	25,600	33,520
26Q	2014-15	2	15.10.14	19.01.2015	95	--	19,000	19,000
26Q	2014-15	3	15.01.15	25.02.2015	41	--	8,200	8,200
26Q	2014-15	4	15.05.15	29.05.2015	14	--	2,800	2,800
Total						25,030	89,000	1,14,030

4. Aggrieved with the above orders of the AO, the assessee preferred the appeal for all seven quarters before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The due date for filing the quarterly TDS and the date on which the TDS statement was filed and the delay of days have been reflected in the table mentioned above. However, the penalty u/s 234E of the Act has also been reflected there. After the due date for filing the quarterly TDS statement, the penalty/fee is leviable u/s 234E of the Act for each days default. The Ld. Representative of the assessee has argued that the late fee u/s 234E of the I.T. Act is not leviable under the provisions of Section 234E, 200A (a,b,c,d,e and f) and also in view of the provisions of Section 200 (3) of the Act. It is argued that the provisions of Section 200(3) of the Act speaks that for late filing of the TDS statement of each quarter, the fee is liable to be imposed w.e.f. 01.04.2005 and the provisions of Section 272A(2)(k) of the Act provides for levy of penalty of Rs.100 per day for each day of default in filing TDS inserted w.e.f. 01.04.2005. It is contended that in the circumstances when the TDS statement has been filed upto 29.05.2015, therefore, in the said circumstances, no late fee is leviable in accordance with law and in support of these contentions. The Ld. Representative of the assessee has placed reliance upon the decision of Hon'ble Karnataka High Court in case of titled as **Fatheraj Singhvi Vs. Union of India (2016)(73 taxmann.com 252) (Kar)** and the decision of Hon'ble ITAT in **ITA. No.3324/M/2015 dated 31.03.2017 titled as Kamala Enterprises Vs. ITO (TDS)** and the decision of the Hon'ble ITAT in **ITA. No.652/M/2016 dated 18.01.2019 titled as M/s. Bathija International Vs. DCIT-CPC-TDS, Mumbai**. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the

order passed by the CIT(A) in question. The factual position is not in dispute which has been reflected above in the table while discussing brief facts of the case. The only question arises before us whether the fee u/s 234E is not leviable earlier to 01.06.2015 or subsequent to 01.06.2015. Here, we are inclined to discuss the finding by the Hon'ble ITAT in the case of **M/s. Bathija International (supra)** and the relevant finding has been given in para no, 6 which is hereby reproduced as under: -

“6. We have carefully considered the rival submissions. The late fee envisaged in Section 234E of the Act has been charged by the Assessing Officer in this case while processing the TDS statement under Section 200A of the Act on 14.06.2013, which is indeed prior to 01.06.2015. Ostensibly, a perusal of bare provisions of Section 200A of the Act show that prior to 01.06.2015, it did not empower the Assessing Officer to levy the fee prescribed in Section 234E of the Act, while processing the statement of TDS. Thus, the stand of the assessee is borne out of the bare provisions of the Act, as it stood at the relevant point of time. Our coordinate bench in the case of M/s. Dhama Finance Ltd. (supra) has also taken a similar view. In fact, the Mumbai bench has noted and followed an earlier decision of the Pune bench of the Tribunal in the case of Gajanan Constructions and others, ITA Nos. 1292 & 1293/PN/2015 dated 23.09.2016. In so far as the reliance placed by the CIT(A) on the judgment of the Hon'ble Bombay High Court is concerned, the same is quite misplaced. In the said case, the Hon'ble High Court has merely upheld the constitutional validity of Section 234E of the Act; and, as has been rightly noted by the Pune bench, the Hon'ble Bombay High Court was not dealing with the issue as to whether prior to 01.06.2015, while processing the TDS statement under Section 200A of the Act, the late fee envisaged under Section 234E of the Act, could be levied or not. Thus, reliance placed by the Ld. D.R. on the judgment of the Hon'ble Bombay High Court in the case of Rashmikant Kundalia (supra) is misplaced, as it has been rendered in an altogether different context.”

6. The Hon'ble ITAT has also taken the view in case of titled as **Kamala Enterprises Vs. ITO (TDS) in ITA. No.3324/M/2015 dated 31.03.2017** in which it has been held that the filing of the TDS statement

subsequent to 01.06.2015 is liable to be considered. The relevant finding is hereby reproduced as under: -

“4. We have heard the rival contentions, perused the material placed before us including the case law relied upon by both the parties. The Id. AR vehemently argued before us that the late filing fee u/s 234E of the Act is not leviable under the provisions of the Act and was wrongly levied by the AO and upheld by the FAA. The Id. AR drew our attention to the provisions of sections 234E, 200A (a,b,c,d,e and f) and also the provisions of section 200 subsection (3) of the Act. The Id. AR argued before us that the provisions of section 200(3) of the Act require the assessee to file a statement within a prescribed period for each quarter which was inserted from 1.4.2005 and the provisions of section 272A(2)(k) providing for levy of penalty of Rs.100 per day for each day of default in filing TDS also came to be inserted from 1.4.2005. The Id. AR submitted that on 1.4.2010 section 200A was inserted providing for the processing of the TDS statement and the consequent issuance of the intimation to the deductor, determining the amount payable or refundable by it. But in the initial provisions of section 200A, there was no reference for fee payable under section 234E. On 1.7.2012, section 234E provided for levying of fee of Rs.200/- per day for each day of default in filing the TDS. We find merit in the argument of the Id.AR that the provisions of section 200A(1)(c) of the Act there was no authority or competence or jurisdiction on the part of the concerned officer or department to compute or determine the fee under section 234E in respect of assessment which falls prior to 1.6.2015 as the said provisions was also brought on the statute book w.e.f. 1.6.2015 and consequently no demand u/s 234E should have been determined and raised upon the assessee. In the case of Fatheraj Singhvi V/s Union of India 2016] 73 taxmann.com 252 (Karnataka), the Hon’ble Karnataka High Court has decided an identical issue wherein it has been held that no fee under section 234E was payable in respect of period which relates to or falls prior to 1.6.2015. The relevant extract is reproduced below :

“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. 28. The appeals are partly allowed to the aforesaid extent.”

We find that the relevant period is 31st May, 2015 the last date for filing TDS statement and hence period falls prior to 1.6.2015. We, therefore, respectfully following the same ratio as laid down by the Hon’ble Karnataka High Court in the above mentioned case and our aforesaid observations and discussion and the provisions of law, we are inclined to set aside the order of the Id.CIT(A) on this issue and direct the AO to delete the late filing fee u/s 234E of the Act of Rs.8,200/-. We would like to mention that the decision of the Hon’ble jurisdictional High Court was rendered on different context that the issue of levy of late filing under section 234E of the Act was not appealable and therefore not onerous. Since the AO has no power to impose late filing fee, we set aside the order of Id. CIT(A) and direct the AO to delete the fee of Rs.8,200/-.”

7. However, the Hon’ble ITAT has also passed the order in **ITA. No.442/Agra/2017 dated 09.04.2015 titled as Sudarshan Goyal Vs. DCIT (TDS) Ghaziabad** in which it has been specifically held that the TDS statement filed earlier to 01.06.2015 nowhere falls for levy the fee u/s 234E of the Act. The relevant finding has been given in para no. 4, 5 & 6 which is hereby reproduced as under: -

“4. We do not find the view taken by the Id. CIT(A) to be correct in law. As against ‘Rajesh Kaurani’ (supra), ‘Shri 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 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."

8. In view of the above mentioned judgments in which it has been held that the TDS statements which have been filed earlier to 01.06.2015 then no fee is leviable u/s 234E of the Act. All the judgments have been passed on the basis of the decision of the Hon'ble Karnataka High Court in case of **Fatheraj Singhvi(supra)**. In view of the said discussion and by relied upon the decision mentioned above, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A)

in all the appeals and delete the fee u/s 234E of the Act. All the appeals filed by the assessee are hereby allowed.

9. In the result, appeals filed by the Assessee are hereby ordered to be allowed.

Order pronounced in the open court on 07/08/2019

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai दिनांक Dated : 07/08/2019

Vijay/ Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**