

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 2331/DEL/2017 (A.Y. 2016-17)**

Exotique Exports Z-45, Okhla Industrial Area, Phase – II, New Delhi- 110020 PAN : AAAFE1843K (APPELLANT)	Vs.	ACIT (CPC – TDS) Aayakar Bhawan, Sector – 3, Vaishali Ghaziabad (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Surendra Meena, Sr.DR

Date of Hearing	08.08.2019
Date of Pronouncement	27.08.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 31.01.2017 passed by CIT(A)-41, New Delhi for assessment year 2016-17.

2. The Grounds of appeal are as under:

“1. That under the facts and circumstances of the case, it was not justified on the part of the department to levy the late filing fees u/s 234E of the I.T.Act amounting to Rs. 12,800/- relevant to 2nd Quarter – July 2015 to September 2015.

That the appellant had duly deposited the total TDS with the Bank and the late filing of return was only a procedural in nature and did not result into any loss of revenue.

That the appellant had a reasonable cause for not filing the return in time and no fee for late filing deserves to be levied.

2. *That the orders of the lower authorities are not justified on facts and same are bad in law.*

3. *That the assessee craves the right to add, amend, delete or substitute any ground of appeal.”*

3. Order u/s 200A of the Income Tax Act, 1961 dated 22.12.2015 was passed by the ACIT, CPC-TDS in respect of levy of late filing fees u/s 234E of the Income Tax Act.

4. Being aggrieved by the Order u/s 200A of the Income Tax Act, 1961, the assessee filed appeal before the CIT(A). The CIT (A) dismissed the appeal of the assessee.

5. During the hearing, despite filing the power of attorney, none appeared for the assessee nor was the assessee present before us. Notice for hearing was properly issued and served upon the assessee within time. Thus, the service was complete, but since none is present on behalf of the assessee, we are proceeding on the basis of order u/s 200A of the Act and the order of the CIT(A).

6. The Ld. DR relied upon the Order u/s 200A of the Act and the order of the CIT(A).

7. We have heard Ld. DR and perused all the relevant material available on record. The CIT(A) held as under:

“5.5 It is also worth mentioning that the fee u/s 234E is required to be mandatorily paid by the deductor at the time of submission of the TDS statement, calculated at the rate of Rupees two hundred per day. There is no provision in the Act which allows for waiver from the payment of such fees on grounds like the ones raised by the appellant. Any such condonation of delay or leniency would mean punishing the law abiding deductors who had duly calculated the fees u/s 234E and paid the same. Non levy of the fee would

mean punishing the honest and rewarding the guilty, which can never be the intention of the legislature.

5.6 *In a recent judgment the Kerala High Court in the case of Shree Narayana Guru Smarak Sangam Upper Primary School vs. UOI & Ors in December 2016 has further upheld the levy of fee u/s 234E and has held that “on account of the additional work burden which has fallen upon the department due to the fault of the deductor that a fee has been levied.” Hence the claim of the appellant that late filing was only procedural and did not result in any loss to Revenue has no bearing on the levy of fee u/s 234E.*

5.7 *In light of the above discussion and respectfully following the decisions of various the Hon’ble High Courts in the cases of Rashmikant Kundalia vs. Union of India 2015 (54) Taxman.com 200 (Bombay), Lakshminirman Bangalore (P) Ltd. vs. DCIT, Ghaziabad [(2015) 60 taxmann.com 144], M/s Dundlod Shikshan Sansthan vs. Union of India and Shree Narayana Guru Smarak Sangam Upper Primary School vs. UOI & Ors. cited supra, the grounds the grounds of appeal filed by the appellant are dismissed.”*

It is pertinent to note that the assessee is admitting that late filing of TDS return was due to technical and procedural default and not on account of any withholding of TDS by the assessee. Section 234E of the Act clearly sets out that the fee imposed under Section 234E is levied towards regularization of the delay in filing of a TDS return or statement; since the Revenue department has to expend extra effort and resources for processing delayed TDS returns or statements and possibly also incurs the additional burden of interest to be paid to the assessee on whose account tax deduction has been made. The fee imposed u/s 234E is for all intents and purposes a late fee payable for accepting the TDS/Statement/Return at a belated point in time. Thus, there is no need to interfere with the finding of the CIT(A). The appeal of the assessee is dismissed.

7. In result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 27th August, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 27/08/2019

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Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	.08.2019
Date on which the typed draft is placed before the dictating Member	.08.2019
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	