



IN THE INCOME TAX APPELLATE TRIBUNAL

"E" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.4406/Mum./2017
(Assessment Year : 2016-17)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses
Road, Mumbai 400 011
PAN – AABCE1643B

..... Appellant

v/s

Income Tax Officer (TDS)
Ward-1(2)(3), Mumbai

..... Respondent

ITA no.4407/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses
Road, Mumbai 400 011
PAN – AABCE1643B

..... Appellant

v/s

Income Tax Officer (TDS)
Ward-1(2)(2), Mumbai

..... Respondent

ITA no.4408/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses
Road, Mumbai 400 011
PAN – AABCE1643B

..... Appellant

v/s

Income Tax Officer (TDS)
Ward-1(2)(3), Mumbai

..... Respondent

ITA no.4409/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses
Road, Mumbai 400 011
PAN – AABCE1643B

..... Appellant

v/s

Income Tax Officer (TDS)
Ward-1(2)(3), Mumbai

..... Respondent

ITA no.4410/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses
Road, Mumbai 400 011
PAN – AABCE1643B

..... Appellant

v/s

Income Tax Officer (TDS)
Ward-1(2)(3), Mumbai

..... Respondent

ITA no.4411/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses Appellant
Road, Mumbai 400 011
PAN – AABCE1643B

v/s

Income Tax Officer (TDS) Respondent
Ward-1(2)(3), Mumbai

ITA no.4412/Mum./2017
(Assessment Year : 2015-16)

Emsons Exim Pvt. Ltd.
001, Turf Estate, Shakti Mills Lane
Near Famous Studio, Off. Dr. E. Moses Appellant
Road, Mumbai 400 011
PAN – AABCE1643B

v/s

Income Tax Officer (TDS) Respondent
Ward-1(2)(3), Mumbai

Assessee by : None
Revenue by : Shri Chaitanya Anjaria

Date of Hearing – 23.08.2019

Date of Order – 28.08.2019

ORDER

PER BENCH

Captioned appeals by the assessee are directed against common order dated 27th March 2017, passed by the learned Commissioner of

Income Tax (Appeals)-59, Mumbai, pertaining to the assessment year 2015-16 and 2016-17.

2. The common ground of challenge in all these appeals is levy of fee under section 234E of the Income Tax Act, 1961 (for short "*the Act*") while processing the TDS statement u/s 200A of the Act.

3. It is the say of the assessee that the provision empowering levy of fee under section 234E of the Act was introduced to section 200A of the Act with insertion of sub-clause (c) to sub-section (1) by Finance Act, 2015, w.e.f. 1st June 2015. Therefore, it will apply prospectively and not to the TDS statements for any period prior to 1st June 2015. While deciding the issue, there was a difference of opinion between the members constituting the Bench. While the Accountant Member held that the provision of section 200A(1)(c) will apply retrospectively, the Judicial Member held that levy of fee under section 200A(1)(c) would apply prospectively to any period falling after 1st June 2015. Due to difference in opinion between the Members constituting the Bench, the Hon'ble President referred the issue to the Third Member, who framed the following question for deciding the issue:-

"Whether the fees prescribed u/s 234E of the Act can be levied while processing return u/s 200A of the Act for any assessment year / period prior to 1st June 2015 in the instant cases, when there is no decision of jurisdictional High Court and when there are two divergent views expressed by two non-jurisdictional High Courts?"

4. While deciding the issue, the Third Member agreed with the view expressed by the Judicial Member and held that fee under section 234E of the Act can only be charged in respect of delay in filing the statement of TDS for the period after 1st June 2015. Thus, as per the majority view, appeals are allowed for statistical purposes.

5. In the result, assessee's appeals are allowed for statistical purposes.

Order pronounced in the open Court on 28.08.2019

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 28.08.2019

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai