

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH 'B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

ITA Nos. 510, 511 & 512/Hyd/2019
Assessment Years: 2013-14, 2014-15 & 2015-16

Zieta Technologies Pvt. vs. Income-tax Officer, TDS,
Ltd., Hyderabad. Ward – 2(4), Hyderabad.

PAN – AAACZ2805M

Appellant

Respondent

Assessee by: Shri B. Sai Prasad
Revenue by: Shri P. Subba Raju

Date of hearing: 16/09/2019
Date of pronouncement: 20/09/2019

ORDER

PER SMT. P. MADHAVI DEVI, J.M.:

These appeals filed by the assessee for the AYs 2013-14 to 2015-16 are directed against the common and consolidated order of the CIT(A) – 8, Hyderabad dated 30/10/2018. In these appeals, the common grievance of the assessee is that in respect of TDS statements/returns for the period prior to 01/06/2015, the AO was not empowered to charge fees u/s 234E by way of intimation u/s 200A of the Act.

2. At the time of hearing before us, it is submitted by the Id. Counsel for the assessee that the issue in dispute is squarely covered in favour of the assessee by various decisions of the Tribunal and has filed a copy of the Tribunal's order in the case of M/s Ortin Laboratories Ltd., Hyderabad in ITA Nos. 1836, 1839, 1840, 1843, 1846 & 1849/Hyd/2019, order dated 17/07/2019 (where both the Members are signatories).

3. On the other hand, Id. DR submitted that in order to keep the issue alive, the revenue has filed the appeals against the orders of the Tribunal, before the Hon'ble High court of A.P. and, therefore, the orders of the Tribunal have not attained finality.

4. Having considered the rival submissions and perusing the material on record, we find that on an identical issue, the Tribunal has held that fees levied u/s 234E prior to 01/062015 in the intimation made u/s 200A was without authority of law and, therefore, the AO could not have levied such fees u/s 234E prior to 01/06/2015. For the sake of ready reference, relevant paras of the Tribunal's order in the case of M/s Ortin laboratories Ltd. (supra), are reproduced hereunder:

"4. Having regard to the rival contentions and the material on record, we find that the Coordinate Bench of this Tribunal has considered the decision of the Hon'ble Gujarat High Court and also the decision of the Hon'ble Karnataka High Court and has followed the decision of the Hon'ble Karnataka High Court to held the issue in favour of the assessee. For the sake of ready reference, the relevant paragraphs in ITA Nos.1821/Hyd/2018 and others dated 5th April, 2019 are reproduced hereunder:

"8. Considered the rival submissions and perused the material on record. We find that similar issue came up for consideration before the Coordinate Bench of this Tribunal in the case of M/s. Terra Infra Dev. Ltd Hyderabad in ITA Nos.1876 & 1875/Hyd/2017 for A.Ys 2013-14 and 2014-15, order dated 3.10.2018 (wherein both the Members are party), wherein the Coordinate Bench has held as under:

"4. We find that though the provisions for levy of fee in certain cases has been brought into Statute book w.e.f. 1.7.2012, it has been brought under the purview of section 200A only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra), we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior

to 1.6.2015. For the sake of ready reference, the relevant para is reproduced hereunder:

"10. Now coming to the merits of the case, we find force in the argument of the learned Counsel for the assessee that prior to 1.6.2015, there was no mandate, as per the Statute, to make any adjustment on account of levy of fees u/s 234E while processing TDS returns u/s 200A. We have taken note of the order of the Hon'ble Gujarat High Court holding the amendment made to section 200A w.e.f. 1.6.2015, giving power to make adjustment on account of fees u/s 234E while processing returns u/s 200A to be retrospective in nature, stating that this power given to the AO is a machinery provision while the substantive provision of the power to levy fees u/s 234E was always there on the Statute from 1.6.2012. But at the same time, we note that the Hon'ble Karnataka High Court held that levy of fees u/s 234E while processing returns, TDS u/s 200A prior to 1.6.2015 was without any authority of law. With two divergent view of the Hon'ble High Courts on the issue and in the absence of any decision by the jurisdictional High Court, we concur with the learned Counsel for the assessee that as per the well accepted rule of construction, if two reasonable constructions of statute are possible, the construction which favours the assessee must be adopted. In view of the same, respectfully following the decision of the Karnataka High Court, in the case of Fatheraj Singhvi (Supra), we hold that the fees levied in all the present cases u/s 234E prior to 1.6.2015 in the intimations made u/s 200A was without authority of law and the same is therefore, directed to be deleted. In view of the above, all the appeals of the assessee stand allowed".

5. Respectfully following the same, assessee's appeals for both the A.Ys are allowed".

8.1 In the case under consideration, on perusal of record, we find that the TDS returns filed by the assessee for the relevant period i.e. financial years 2012- 13 to 2015-16 were prior to 1.6.2015. Therefore, respectfully following the said decision of the Coordinate Bench, we direct the AO to delete the fees levied u/s 234E. Accordingly, the grounds raised on this issue in all the appeals under consideration are allowed".

5. Since the issue has been decided in favour of the assessee after considering the decision of the Hon'ble Gujarat High Court which

is relied upon by the learned DR, we do not see any reason to take any other view other than what is taken in the assessee's own case."

As the issue under consideration is materially identical to the said case, respectfully following the decision in the said case, we set aside the order of the CIT(A) and direct the AO to cancel the fee levied u/s 234E in all the appeals under consideration.

5. In the result, all the appeals of the assessee are allowed.

Pronounced in the open court on 20th September, 2019.

Sd/-
(A. MOHANALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 20th September, 2019.

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Copy forwarded to:

1. *Zieta Technologies Pvt. Ltd., Flat No. 608, Aditya Trade Centre, Ameerpet, Hyderabad – 500 034*
2. *ITO, TDS, Ward No. 2(4), Hyderabad.*
3. *CIT(A) - 8, Hyderabad*
4. *CIT, TDS, Hyderabad*
5. *The DR, ITAT, Hyderabad*
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