

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA No.379/CTK/2018

(निर्धारण वर्ष / Assessment Year :2014-2015)

Govt. High School, Unit-VI, Bhubaneswar-751001	Vs.	ACIT(TDS), Bhubaneswar
TANNo. : BBNG0 1193 D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Shri J.K.Lenka, DR
सुनवाई की तारीख / Date of Hearing	:	14/10/2019
घोषणा की तारीख/Date of Pronouncement	:	14/10/2019

आदेश / ORDER

Per L.P.Sahu, AM:

This appeal arising out of intimation u/s.200A of the I.T.Act, 1961 issued by the CPC (TDS), Ghaziabad dated 03.06.2015 for the fourth quarter for the Financial Year 2013-2014 relevant to assessment year 2014-2015, against the levy of fee u/s.234E of Rs.74,400/- for late filing of quarterly TDS return.

2. None appeared on behalf of the assessee even the case is called for second round, therefore, the bench decided to dispose off the appeal of the assessee after considering the facts and circumstances of the case, material available on record and considering the submissions of ld. DR.

3. The assessee has filed following grounds of appeal :-

1. *For that the order of Assessment is against the settle principle of law.*

2. *For that the levy of Late Filing Fees U/S 234E prior to 01.06.2015 is not maintainable in the eyes of law.*
3. *For that the order of Assessment U/s 200A by the CPC-TDS, Ghaziabad and by the Commissioner of Appeal-1, Bhubaneswar is ex-parte in nature and not maintainable.*
4. *For that the Assess filled E-TDS return for the last quarter of financial year 2013-14 before 01.06.2015 on 22.05.2015. The assessment order passed levying late filing fees of Rs. 74,400/- is liable to be quashed.*
5. *For that both the impugned orders have been passed violating the principles of natural justice same are liable to be quashed.*
6. *For that the appellant craves leave to submit details at the time of hearing.*

4. Brief facts of the case are that the assessee is a Government High School situated at Unit-VI, Ganganagar, Bhubaneswar and has filed TDS Quarterly statement of 24Q for F.Y.2013-2014 relevant to A.Y.2014-2015. Thereafter the DCIT(TDS-CPC) Ghaziabad imposed a later fee u/s.234E of the Act at Rs.74,400/- for delay in filing of quarterly TDS statement. Aggrieved by the order of AO, the assessee filed appeal before the CIT(A). However, the CIT(A) has dismissed the appeal of the assessee.

5. Now, the assessee is in further appeal before the Income Tax Appellate Tribunal.

6. None for the assessee, however, ld. DR before us supported the orders of lower authorities.

7. After hearing the submissions of ld. DR, we noticed that the demand issued by the CPC, Ghaziabad dated 03.06.2015 imposing late fee of Rs.74,400/- u/s.234E of the Act. We further noticed that in the acknowledgement there was no any failure on the part of the assessee

has been shown i.e. short payment, short deduction/collection, interest on payment default u/s.201(1A)/206C(7) of the Act, interest on short payment, interest on late payment, interest on deduction/collection default u/s.201(1A)/206C(7) of the Act, interest on short deduction/collection, interest on late deduction/collection. It is, therefore, amply clear that the assessee had deducted TDS on the due amounts and it has been deposited within the time and there is merely a failure for late filing of quarterly TDS return for the Quarter-IV. The assessee is a Government Department and the case is related to financial year 2013-2014 before amendment in the Act. Merely the intimation was generated u/s.200A of the Act on 03.06.2015, cannot be the basis for the levy of fee u/s.234E of the Act. To support our above view, reliance can be placed on the decision of Jodhpur Bench of the Tribunal in the case of Station Headquarters (Army) Vs. ACIT, [2019] 108 taxmann.com 294(Jodhpur-Trib.), wherein the coordinate bench of the Tribunal at para 6 has observed as under :-

“6. In the light of the aforesaid decision and respectfully following the same, we note that it appears that in all matters, the intimation given by the AO which are given in purported exercise of power u/s. 200A are in respect of late fees u/s. 234E of the Act for the period prior to 01.06.2015. As such, it is on account of the intimation given making demand of the late fee in purported exercise of powers u/s. 200A of the Act. We note that clause (c) of sec. 200A of the Act empowers the AO to levy late fee was w.e.f. 01.06.2015 and there is no indication [which is either express or implied] while amendment was made that it is retrospective or clarifactory in nature. Since the AO is empowered to levy the late fee for late filing of the statement of TDS/TCS statement and in the Memorandum explaining the introduction of Finance Bill, 2015 clearly took note of the provisions of Chapter XVIIIB under which

the persons deducting tax i.e. deductor was required to file quarterly tax deduction at source, statements containing the details of deduction of tax made during quarterly by the prescribed due dates. (Similar responsibility is on the persons required to collect tax of certain specified receipt u/s. 206C of the Act). In order to provide effective deterrence against the delay in furnishing TDS/TCS statements, the Finance Act, 2012 inserted sec. 234E of the Act to provide for levy of fees on late furnishing of TDS statements. The Memorandum of Finance Bill, 2015, further took note of the fact that the Finance (No. 2) Act 2009, inserted sec. 200A in the Act, which prescribed for furnishing of TDS statements for determining the amount payable or refundable to the deductor. It further took note that however, as sec. 234E of the Act was inserted after the insertion of sec. 200A in the Act, the existing provisions of sec. 200A of the Act do not provide for determination of late fees payable u/s. 234E of the Act at the time of processing of TDS statement. It was thus, proposed to amend the provisions of sec. 200A of the Act so as to enable the computation of taxes payable u/s. 234E of the Act at the time of processing of TDS statement u/s. 200A of the Act. Taking note of the aforesaid legal history the Memorandum explaining Finance Bill, 2015 took note of the fact that at that time there does not exist any provision in the Act to enable the processing as TCS returns and hence, a proposal was made to insert a provision in this regard and also the post provision was incorporated the mechanism for computation of late fees payable u/s. 234E of the Act. Thus, we note that a perusal of the Memorandum explaining the insertion of provision relating to insertion of clause (c) to sec. 200A of the Act clarifies the intention of the legislature in inserting the said provision. The Finance Bill further clearly provides that the amendment took effect from 01.06.2015, so there is no indication whatsoever that clause (c) of section 200A is retrospective or clarificatory in nature. Therefore, the AO is not empowered to levy late fees u/s. 234E of the Act before 01.06.2015. Therefore, in the light of the aforesaid discussion and the ratio laid by the Pune Bench in Maharashtra Cricket Association (supra), we hold that the amendment [clause (c)] was inserted u/s. 200A of the Act which has been given effect from 01.06.2015 is prospective in nature, and no computation of late fee for the demand or the intimation for the late fee u/s. 234E could be made for the TDS deducted for the respective assessment years prior to 01.06.2015. Therefore, the intimation u/s. 200A of the Act by the AO, TDS for payment of late fee u/s. 234E of the Act for the respective assessment years prior to 01.06.2015 is without any authority of law. In the light of the aforesaid view, we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO with a direction to AO that the late fee levied for the period of delay of filing return prior to 01.06.2015 need to be deleted. We further clarify that the AO is well within his jurisdiction to levy late fee u/s. 234E of the Act for the period starting only from 01.06.2015 to the date of actual filing of the TDS return. In sum and substance, the levy of late fee u/s. 234E of the Act is valid from the period from 01.06.2015 to the date of actual filing of the TDS return and the balance fees levied earlier to 01.06.2015 is directed to be deleted.”

Respectfully following the above observations of the Tribunal in the aforesaid case and looking to the facts and circumstances of the case, we set aside the impugned order passed by the CIT(A) and direct the AO to delete the fee levied u/s.234E of the Act at Rs.74,400/- on account of late filing of TDS return for Quarter-IV. Accordingly, we allow the grounds of appeal raised by the assessee.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 14/10/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 14/10/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Govt. High School, Unit-VI,
Bhubaneswar-751001
2. प्रत्यर्थी / The Respondent-
ACIT(TDS), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रतिलिपि //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक /
ITAT, Cuttack