

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 Nos.350, 351,356&357/CTK/2018

(AY:2013-2014)(4th Quarter) 24Q

(AY:2013-2014)(4th Quarter) 26Q

(AY:2014-2015)(4th Quarter) 24Q

(AY:2014-2015) (4th Quarter)26Q

Kailash Housing Ltd., Plot No.1133, Bomikhal, Cuttack Road, Bhubaneswar	Vs.	ACIT, CPC, TDS, Ghaziabad, New Delhi
TANNo. : ABCK 6354 M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing	:	15/10/2019
घोषणा की तारीख/Date of Pronouncement	:	15/10/2019

आदेश / ORDER

Per Bench :

These appeals arising out of intimation u/s.200A of the I.T.Act, 1961 issued by the CPC (TDS), Ghaziabad dated 16.10.2016 & 20.12.2016, respectively for the fourth quarter for the Assessment Year 2013-2014 & 2014-2015, against the levy of fee u/s.234E of the Act for late filing of quarterly TDS return and confirm by the CIT(A).

2. Ld. AR before us submitted that the CIT(A) has committed gross error of law as well as in fact while confirming the impugned order and levy of fee u/s.234E of the Act in the aforesaid appeals ignoring the submission of the assessee. Therefore, ld. AR submitted that the levy of late fee in all the above appeals deserves to be deleted.

3. On the other hand, ld.DR relied on the orders of authorities below.

4. After hearing the submissions of ld. DR, we noticed that the demand issued by the CPC, Ghaziabad dated 16.10.2016 imposing late fee of Rs.28,400/- for Quarter-4(24Q), Rs.22,560/- for Quarter-4(26Q) for assessment year 2013-2014 and vide demand notice dated 20.12.2016 levying late fee of Rs.29,200/- for Quarter-4(24Q) & Rs.29,200/- for Quarter-4(26Q) for the assessment year 2014-2015 u/s.234E of the Act, respectively. 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(24Q & 26Q). 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 XVIIB 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."

5. 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 late fee of Rs.28,400/- for Quarter-4(24Q), Rs.22,560/- for Quarter-4(26Q) in assessment year 2013-2014 and Rs.29,200/- for Quarter-4(24Q) & Rs.29,200/- for Quarter-4(26Q) u/s.234E of the Act in assessment year 2014-2015, respectively. Accordingly, we allow the grounds raised by the assessee in all the appeals.

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

Order pronounced in the open court on 15/10/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 15/10/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Kailash Housing Ltd.,
Plot No.1133, Bomikhal,
Cuttack Road, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
ACIT, CPC, TDS, Ghaziabad, New Delhi
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 प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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