

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.2401/Bang/2018  
(Assessment Year: 2015-16)

Nemichand Ratanchand Jain, 21/5, Albert Victor Road, Fort, Bengaluru – 560 002 (Appellant)	Vs.	Asst. Commissioner of Income Tax, CPC – TDS, Ghaziabad. (Respondent)
---	-----	---

Assessee By:	Smt. Suman Lunkar, C.A.
Revenue By:	Shri M. Vijay Kumar, Addl. CIT (D.R)

Date of Hearing :	05.11.2019
Date of Pronouncement :	08.11.2019

**ORDER**

**PER SHRI PAVAN KUMAR GADALE, JM :**

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-9, Bangalore passed against the order under Section 200A and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The learned Commissioner of Income tax (Appeals), having accepted the appeal of the appellant and having cancelled the order U/s 200(A) of the I.T. Act has erred in holding in the same order that the TDS return filed by the appellant is non-est under I.T. Act.

2. The facts of the case and the law applicable have not been properly appreciated by the learned Commissioner of Income tax (Appeals). The learned Commissioner of Income tax (Appeals) has erred in not appreciating that:

- a) there was no requirement or pre condition of payment of fee U/s. 234E
- b) the TDS Return filed by the appellant is valid
- c) there is no specific provision in law to treat the return filed as invalid

3. In any case and without prejudice, the act of the Commissioner of Income tax (Appeals) in holding the TDS Statement/return to be non-est being beyond the power of Commissioner of Income tax (Appeals) U/s 251 of the Act makes the order of the Commissioner of Income tax (Appeals) bad in law to the extent that it holds the TDS return / statement filed by the appellant is non-est and therefore the order to that extent is liable to be quashed.

4. In any case and without prejudice, the learned CIT(A) has erred in stating that the appeal is partly enhanced in terms of section 251(1)(c) of the Act by treating the TDS return as non est. The action of CIT(A) being wholly erroneous both on facts and the law applicable is to be negated.

5. In any case and without prejudice, if the view of the Commissioner of Income tax (Appeals) is that there is no return / statement at all, then the order passed by Commissioner of Income tax (Appeals) on an intimation processing such so called 'non-est' return would also be bad in law and liable to be quashed.

6. In view of the above and on the other grounds of the appeal to be adduced at time of hearing, it is requested the order of Commissioner of Income tax (Appeals) to the extent it holds TDS return to be non-est and the appeal is enhanced be quashed or at least it be held that TDS return/statement filed by appellant is valid return/statement.

3. The brief facts of the case are that the assessee is an individual and received intimation under Section 200A of the Act with a liability of amount payable Rs.7,600 for 4th Quarter of F.Y.2014-15 i.e. A.Y. 2015-16 and whereas Quarter 4 being Jan., 2015 to March, 2015. Further the assessee has filed TDS statement with authorities on 22.6.2015. The assessee has been filing the TDS statements regularly but due to unavoidable circumstances the TDS statement for 4<sup>th</sup> Quarter of F.Y. 2014-15 was filed with delay and late filing fee of Rs.7,600 is levied under Section 234E of the Act as per intimation under Section 200A of the Act. Aggrieved by the intimation, the assessee has filed an appeal with the CIT (Appeals). The appellate authority considering the grounds of appeal, submissions and judicial decisions has granted relief in respect of late filing fees levied under Section 234E of the Act relying on the decision of Hon'ble jurisdictional High Court in the case of Fatheraj Singhvi Vs. UOI 73 Taxmann.com 252 / 289 CTR 602 (Karnataka). But the learned Authorised Representative emphasized that the learned CIT (Appeals) having cancelled levy of late filing fees under Section 234E of the Act but however held that the assessee should pay prescribed fees before filing the TDS Return. Since the assessee has not paid the late filing fees prescribed before filing of TDS Returns, therefore the TDS Returns filed by the assessee are treated as nonest. The learned Authorised Representative further submitted that the learned CIT (Appeals) has no jurisdiction or power to treat the

TDS Returns as nonest and relied on judicial decision and prayed for allowing the grounds of appeal of the assessee Contra, the Id. DR supported the orders of learned CIT (Appeals) on the disputed issue.

4. We heard the rival submissions and perused the material on record. Prima facie, the sole disputed issue being the learned CIT (Appeals) treated the TDS returns filed by the assessee as nonest as there is no payment of prescribed fees along with the filing of TDS Returns. The learned Authorised Representative brought to the knowledge of the Bench on the similar issue, co-ordinate Bench of Tribunal in the case of Shri Puja Daga Vs. ACIT in ITA Nos.2661 to 2665/Bang/2018 Dt.19.03.2019, has dealt and granted relief. We found that the disputed issue in the present case is identical and similar to the issue dealt by co-ordinate Bench and we consider proper to consider the observations of co-ordinate Bench of Tribunal at pages 4 to 6 of the order which read as under :

4. We are of the opinion that the present TDS return intimation orders passed by the CIT(A) falls under proviso to Sec. 251(1)(c) of the Act and further the TDS returns filed by the assessee have been processed and accepted by the revenue and late fee for delay in filing the

TDS statement under 234E of the Act was levied. We found the The Revenue has not treated the TDS returns filed as defective and processed the returns. We perused the provisions of Sec. 200(A) of the of the Act processing of statements of tax deduction at source:

*"200A. (1) Where a statement of tax deduction at source [or a correction statement] has been made by a person deducting any sum ( hereafter referred to in this section as deductor) under Section 200, such statement shall be processed in the following manner, namely;-*

*(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely;-*

*(i) any arithmetical error in the statement; or*

*(ii) an incorrect claim, apparent from any information in the statement;*

*(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement.*

*(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;*

*(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;*

*(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and*

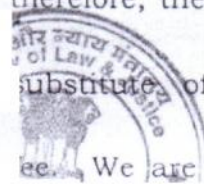
*(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor."*

5. We found that proviso to Sec. 200(1)(A)(c) of the Act has been substituted by the finance Act in 2015 with effect from 01.06.2015

therefore, the period in dispute in the assessee's case is much prior to

substitute of clause and there was no requirement of payment of late

ec. We are of the substantiate opinion that the observations of the



CIT(A) treating the TDS return as non-est is not tenable. Hence we restrict /sustain the order of the CIT(A) to the extent of granting of relief for late fee u/s 234E of the Act by relying on the Hon'ble Karnataka High Court decision of Fatheraj Singhvi Vs. Union of India (supra). Accordingly, we set aside the order of the CIT(A) to the extent of treating the TDS returns filed by the assessee as non-est and Modify the CIT(A) order and allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

We, following the judicial precedence and co-ordinate Bench decision of the Tribunal, sustain the order of the learned CIT (Appeals) to the extent of granting of relief on late fees under Section 234E of the Act of Rs.7,600 relying on the jurisdictional High Court decision in the case of Fatheraj Singhvi Vs. UOI 73 Taxmann.com 252 (Karnataka) and we set aside the findings in the order of CIT (Appeals) to the extent of treating the TDS Returns filed by the assessee as nonest and modify the CIT (Appeals) order accordingly and allow the grounds of appeal of the assessee.

5. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 8th Nov., 2019.

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 08.11.2019.

\*Reddy GP

Copy to

i)The Appellant	ii)The Respondent	iii)CIT (Appeals)
iv) Pr. CIT	v)DR, ITAT, Bangalore	vi)Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore