

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI

Before S/Shri Saktijit Dey, Judicial Member  
& Manoj Kumar Aggarwal, Accountant Member

ITA No.7581/Mum/2016  
Assessment Year 2013-14

Marudhar Foods P. Ltd., 10/11, 201/203 Kotak Bhavan, Narsi Natha Street, Masjid Bunder, Mumbai 400 009.  PAN AADCM3223B  (Appellant)	Vs.	DCIT CPC- TDS, Ghaziabad.      (Respondent)
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Appellant By : None  
Respondent By : Shri K Madhusudhan

Date of Hearing :03.10.2019

Date of Pronouncement : 11.10.2019

**ORDER**

**Per Saktijit Dey, Judicial Member:**

This is an appeal by the assessee against order, dated 21.10.2016, of learned CIT(A)-13, Mumbai, confirming levy of fee u/s 234E of the Act for the second quarter of F Y 2012-13.

2. Briefly, the facts are, while processing statements of TDS filed by the assessee for the F.Y. 2012-13, the Assessing Officer noticed that assessee had not filed some of the statements of TDS within the due date prescribed under the Act. Accordingly, in the order passed u/s. 200A of the Act, he charged fee u/s. 234E of the Act for an amount of Rs 18,850/- for second quarter and amount of Rs 31,600/- for third quarter of F.Y. 2012-13, aggregating to Rs 50,450/-. Though, the assessee challenged the levy of fee u/s. 234E of the Act by filing appeal before learned CIT(A), however, he

sustained the levy of fee u/s. 234E on the reasoning that levy of fee u/s. 234E of the Act being not in the nature of adjustment, assessee is not eligible to file an appeal u/s. 246A of the Act. Accordingly, he dismissed the appeal filed by the assessee.

3. When the appeal was called for hearing no one was present on behalf of the assessee inspite of issuance of hearing notice through registered post with AD. It is further noted that on earlier occasions also the assessee went unrepresented when the appeal was posted for hearing. Under these circumstances, we proceed to dispose of the present appeal exparte qua the assessee after hearing the learned DR and on the basis of material available on record.

5. We have heard the learned DR and perused the material on record. The basic premise on which the assessee has challenged levy of fee u/s 234E of the Act, as revealed from the grounds raised is the Assessing Officer was not vested with any authority to levy fee u/s. 234E of the Act while processing the statement of TDS u/s. 200A prior to insertion of clause (c) by Finance Act, 2015 w.e.f. 01.06.2015. On a careful examination of the relevant statutory provision, it is evident, though section 234E of the Act providing for levy of fee in case of delayed filing of statement of TDS was introduced to the Statute by the Finance Act, 2012, w.e.f. 01.07.2012, however, no corresponding amendment was made to provision of section 200A of the Act. Only by Finance Act, 2015 Clause (c) was introduced to section 200A providing for levy of fee u/s 234E of the Act while processing the statement of TDS u/s. 200A of the Act. Further, the aforesaid amendment to section 200A was made effective from 01.06.2015. Thus, admittedly, prior to the aforesaid amendment, the Assessing Officer had no authority in law to levy fee u/s. 234E while processing the statement of TDS u/s. 200A. Incidentally, in the facts of the present case, not only the period

for which fee u/s. 234E has been levied is prior to 01.06.2015, but even the order u/s. 200A was passed by the Assessing Officer prior to the aforesaid amendment to section 200A. Now it is fairly well-settled by virtue of various judicial pronouncements on the issue that amendment to section 200A providing for levy of fee u/s. 234E of the Act, would apply prospectively to a period following after 01.06.2015. That being the case, the levy of fee u/s. 234E of the Act in the facts of the present case is invalid. Accordingly, we delete the late filing fee of Rs 50,450/-.

Grounds are allowed.

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

Order pronounced in the open court on this 11<sup>th</sup> day of October, 2019.

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Saktijit Dey)**  
**JUDICIAL MEMBER**

Mumbai; Dated : 11<sup>th</sup> October, 2019.  
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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. DR, 'B' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)  
Income Tax Appellate Tribunal, Mumbai