

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

**ITA No.6704/Mum/2018
(Assessment Year: 2013-14)**

Harsh Enterprises
401, Utpal Park Annexe,
Opp Union Bank,
Off Sitladevi Temple Road,
Mahim (W), Mumbai,
Maharashtra – 400 016

TDS, CPC
Aaykar Bhavan, Sector – 3,
Vaishali, Ghaziabad, UP
Vs. Uttar Pradesh, 201 010

PAN – ACVPB7907J

(Appellant)

(Respondent)

Appellant by: Shri N.K. Bhuta, A.R
Respondent by: Shri K. Bhoopati, D.R
Date of Hearing: 11.11.2019
Date of Pronouncement: 15.11.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-9, Mumbai, dated 23.10.2018, which in turn arises from the Intimation received from the Assistant Commissioner of Income Tax, Central Processing Cell-TDS, Ghaziabad, under Sec.200A of the Income Tax, 1961 (for short 'Act'), dated 29.08.2016.

2. Briefly stated, the assessee had delayed filing of its statements of tax deduction at source for the third quarter for A.Y. 2013-14. Resultantly, the ACIT, Central Processing Cell-TDS levied late filing fees of Rs.4,790/- under Sec.234E of the Act.

3. Aggrieved, the assessee assailed the imposition of late filing fees under Sec.234E before the CIT(A). It was observed by the CIT(A) that the appeal which was manually filed by

the assessee before him on 10.10.2016, therein involved a delay of 12 days. It was the claim of the assessee before him that the aforesaid delay in filing of the appeal had occasioned, for the reason, that she was away to Indore to see her ailing mother during the period 25.09.2016 to 09.10.2016. Apart therefrom, it was observed by the CIT(A) that the assessee after having been intimated by his office that filing of an appeal manually was no more permissible, had thereafter electronically filed the appeal only as on 14.02.2017. Further, on the basis of the details gathered by the CIT(A) from the CPC-TDS, it was noticed by him that the TDS statement for the third quarter (Form No. 26Q) for the financial year 2012-13 was processed by CPC on 16.06.2013. It was observed by the CIT(A), that the resultant intimation generated under Sec. 200A was sent to the assessee on 20.06.2013. Observing, that the aforesaid facts so gathered from the CPC clearly militated against the claim of the assessee that she had received the intimation as regards processing of its TDS statement from the CPC-TDS on 29.08.2016, the CIT(A) called upon the assessee to explain the same. In reply, it was the claim of the assessee that the aforesaid intimation was received from the CPC-TDS only as on 29.08.2016. In support of her aforesaid claim, the assessee had relied on the fact that only the aforesaid intimation was visible on TRACES website. Accordingly, it was submitted by the assessee that only a delay of 12 days was involved in filing of the appeal. However, the CIT(A) declined to accept the aforesaid claim of the assessee. Observing, that the assessee had received the intimation for the TDS statement on 20.06.2013, the CIT(A) was of the view that the assessee ought to have filed an appeal before him latest by 20.07.2013. Accordingly, the CIT(A) was of the view that the delay involved in the filing of the manual appeal worked out to a period of 3 years and 2 months (and not 12 days as had wrongly been computed by the assessee). As the assessee had failed to come forth with a 'sufficient cause' to explain the aforesaid substantial delay of 3 years and 2 months in filing of the appeal, the CIT(A) declined to condone the same. As regards the merits of the case, the CIT(A) was not inclined to accept the claim of the assessee that the late filing fee under Sec.234E was not liable to be imposed for the period prior to 01.06.2015. i.e the date on which Sec. 234E enabling the levy of fees was made available in Sec.200A. On the basis of his aforesaid observations the CIT(A) dismissed the appeal of the assessee.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. We shall first advert to the observations of the CIT(A) as regards the delay involved in filing of the appeal by the assessee before him. As is discernible from the order of the CIT(A), it was concluded by him that the delay involved in filing of the appeal by the assessee worked out to 3 years and 2 months (and not 12 days as had been wrongly computed by the assessee). As observed by us hereinabove, the genesis of the aforesaid controversy hinges around the aspect as to when the intimation for the TDS statement filed by the assessee on 07.02.2013 (Form 26Q) for the Qtr-3 for A.Y. 2013-14 was received by the assessee. As claimed by the assessee, the aforesaid intimation was received by him on 29.08.2016. On the other hand it was observed by the CIT(A), that as per the information obtained from the CPC-TDS the aforesaid intimation for the TDS statement was issued on 16.06.2013. Further, it was observed by the CIT(A), that the resultant intimation generated under Sec. 200A was sent by CPC to the assessee on 20.06.2013. We have perused the order of the CIT(A) and are unable to concur with the view taken by him as regards the period of delay involved in filing of the present appeal. As noticed by the CIT(A), it is a matter of fact, that only the intimation dated 29.08.2016 is visible on the TRACES website. In fact, a perusal of the intimation for the TDS statement filed by the assessee along with the appeal before us, therein clearly reveals that the "Order pass date" is mentioned as 29.08.2016. On the basis of the aforesaid facts, we are of the considered view that there is substance in the claim of the assessee that the intimation under Sec.200A was received by her on 29.08.2016. As a matter of fact, no material has been placed on record to dislodge the aforesaid claim off the assessee. Accordingly, on the basis of the aforesaid facts, the delay involved in manual filing of appeal by the assessee on 10.10.2016, i.e computed from 29.08.2016, stands worked out at 12 days. Insofar the delay of 12 days that was involved in filing of the manual appeal before the CIT(A) is concerned, we have perused the explanation of the assessee. In our considered view, as the assessee during the relevant period was attending to her ailing mother at Indore and was not available in the city, therefore, there was a justifiable reason for the delay in filing of the appeal before the CIT(A). On the basis of the aforesaid facts, we are of the considered view that the CIT(A) had on the basis of

misconceived facts declined to condone the delay of 12 days involved in filing of the present appeal by the assessee before him. In all fairness, we find, that as the assessee had a justifiable reason to explain the delay of 12 days in filing of the present appeal, therefore, we 'set aside' the order of the CIT(A) to the extent he had declined to condone the delay involved in filing of the appeal before him

5. As regards the merits of the case, we find that the assessee had delayed the filing of the statement of the tax deducted at source in "Form No. 26Q" for the third quarter for financial year 2012-13. As is discernible from the records, the aforesaid statement was filed by the assessee on 07.02.2013, which as observed by us hereinabove was processed on 16.06.2013. On the basis of the intimation under Sec. 200A late filing fee of Rs.4,600/- was levied under Sec. 234E on the assessee. We find that the **Hon'ble High Court of Karnataka** in the case of **Fatehraj Singhavi Vs. Union of India (2016) 289 CTR 602 (Kar)** had concluded that the notice under Sec.200A computing the fee under Sec. 234E, to the extent the same was levied in respect of the period of tax deduction prior to 01.06.2015 was liable to be 'set aside'. The aforesaid judgment of the Hon'ble High Court of Karnataka had thereafter been relied upon by the **ITAT, Chandigarh** in the case of **Sonalac Paint & Coating Ltd. Vs.DCIT, (2018) 176 DTR 83 (Chd)**, wherein it was observed as under:

"In the aforesaid case it was observed by the Tribunal that levy of fees under Sec.234E while processing the TDS returns under Sec.200A prior to 01.06.2015 was without any authority of law. On the basis of its aforesaid observations, the Tribunal had concluded that the fees levied under Sec.234E prior to 01.06.2015 in the intimations made under Sec. 200A was without authority of law and the fees therein levied was liable to be deleted. Apart therefrom, we find that the issue involved in the appeal before us is also covered by an order of the ITAT, Amritsar in the case of **Tata Rice Mills Vs. ACIT (CPC), TDS Ghaziabad (ITA No. 395/ASR/2016; dated 25.10.2017)**. In the aforementioned case, it was observed by the Tribunal that the assessee had filed its statement of tax deduction at source for the 'second quarter' relevant to Financial year 2014- 15 on 19th June, 2015, which was thereafter processed on 23.06.2015 by the ACIT-TDS, CPC and a late fee under Sec. 234E of Rs. 49,400/- was charged in the intimation issued under Sec. 200A of the I.T. Act. It was observed by the Tribunal that as the amendment made under Sec.200A was effective from 01.06.2015 and applicable prospectively, hence no computation of fee under Sec.234E could be made for the TDS deducted prior to 01.06.2015.

7. We have given a thoughtful consideration to the issue before us and finding ourselves as being in agreement with the view taken by the Tribunal in the case of **Tata Rice Mills (supra)**, hence are of the considered view that the ACIT-TDS, CPC Ghaziabad in the case before us had erred in levying fees under Sec.234E in respect of tax deducted at source for the four quarters prior to 01.06.2015 in respect of the captioned years viz. A.Y. 2013-14, 2014-15 and A.Y.2015-16. We thus not being persuaded to subscribe to the view taken by the CIT(A) who had upheld the levy of fees by the A.O, thus set aside his order and vacate the demand raised by the A.O under Sec.234E in the hands of the assessee for all the four quarters for the year under consideration."

As in the present case before us, the fees under Sec.234E has been levied in respect of the delay on the part of the assessee for filing her TDS return in "Form 26Q" for the third quarter of financial year 2012-13 i.e the period prior to 01.06.2015 (the cut of date from which the amendment enabling levy of fees under Sec. 234E was made available in Sec.200A,therefore, we are of the considered view, that in the backdrop of the aforesaid settled position of law, as per which, in the course of the processing of a statement of tax deducted at source under Sec.200A no fees under Sec.234E could be charged for the period prior to 01.06.2015, the aforesaid fees for late filing of TDS statement by the assessee cannot be sustained and is liable to be vacated. Accordingly, we set aside the late filing fee under Sec.234E of Rs.4,600/- levied by the A.O in the case before us.

5. Resultantly, the order of the CIT(A) is set aside and the late filing fees of Rs. 4,600/- imposed under Sec.234E is deleted.

6. The appeal of the assessee is allowed.

Order pronounced in the open court on 15.11.2019

Sd/-
(N.K. Pradhan)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 15.11.2019
PS. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
- .
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai