

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

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

**ITA Nos.6499 to 6502/Mum/2018
(Assessment Years: 2013-14 to 2016-17)**

M/s K.D. Realities Pvt. Ltd.
A2, 5 Acres, Kothari Compound,
Near Shayog Complex, Manpada,
Thane (West), 400607

Commissioner of Income
Tax-Appeals-1,
Vs. Thane- 400 604

PAN – AADCK3114H

(Appellant)

(Respondent)

Appellant by: Ms. Nupur Agarwal, A.R

Respondent by: Shri K. Bhoopathi, D.R

Date of Hearing: 11.11.2019

Date of Pronouncement: 15.11.2019

ORDER

PER RAVISH SOOD, J.M :

The present appeals filed by the assessee are directed against the consolidated order passed by the CIT(A)-1, Mumbai, dated 17.08.2018, which in turn arises from the respective orders passed by the Assistant Commissioner of Income Tax, Central Processing Cell-TDS under Sec.154 of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2013-14 to A.Y. 2016-17. As the assessee in the captioned appeals has assailed the levy of fees charged under Sec. 234E of the Act, therefore, the same are being taken up and disposed off by way of a consolidated order.

2. Briefly stated, the assessee company had delayed the filing of the statements of tax deduction at source for the A.Y. 2013-14 to A.Y. 2016-17, as a result whereof, the ACIT, Central Processing Cell-TDS had levied late filing fees under Sec.234E of the Act, as under :

FORM	F. Yr	QTR	DUE DATE	DATE OF FILING	DELAY DAYS	Penalty u/s234E (in Rs.)
26Q	2012-13	2	15.10.2012	25.02.2013	133	26,600

26Q	2012-13	3	15.01.2013	21.03.2013	65	13,000
26Q	2012-13	4	15.05.2013	18.07.2013	64	12,800
26Q	2012-13	4	15.05.2013	08.10.2013	146	29,200
					Total	81,600
A.Yr. 2014-15						
26Q	2013-14	1	15.07.2013	02.06.2014	322	64,400
26Q	2013-14	2	15.10.2013	02.06.2014	230	46,000
26Q	2013-14	3	15.01.2014	02.06.2014	138	27,600
26Q	2013-14	4	15.05.2014	02.06.2014	18	3,600
24Q	2013-14	1	15.07.2013	20.11.2015	858	1,71,600
24Q	2013-14	2	15.10.2013	20.11.2015	766	1,53,200
24Q	2013-14	3	15.01.2014	20.11.2015	674	1,34,800
24Q	2013-14	4	15.05.2014	20.11.2015	554	1,10,800
					Total	7,12,000
A.Yr. 2015-16						
26Q	2014-15	1	15.07.2014	26.11.2015	499	99,800
26Q	2014-15	2	15.10.2014	30.11.2015	411	82,000
26Q	2014-15	3	15.01.2015	30.11.2015	319	63,000
26Q	2014-15	4	15.05.2015	30.11.2015	199	39,800
24Q	2014-15	1	15.07.2014	02.12.2015	505	1,01,000
24Q	2014-15	2	15.10.2014	02.12.2015	413	82,400
24Q	2014-15	3	15.01.2015	02.12.2015	321	64,200
24Q	2014-15	4	15.05.2015	02.12.2015	201	40,200
					Total	5,73,200
A.Yr. 2016-17						
26	2015-16	1	15.07.2015	15.12.2015	153	30,600
					Total	30,600

3. Aggrieved, the assessee assailed the imposition of late filing fees under Sec. 234E before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee dismissed all the appeals.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeals submitted, that as the section enabling levy of fees under Sec.234E was made available in Sec. 200A with effect from 01.06.2015, therefore, the ACIT, CPC, Ghaziabad had erred in levying fees under the said statutory provision in A.Y. 2013-14 and 2014-15. Insofar the levy of fees under Sec.234E for A.Y. 2016-17 was concerned, it was submitted by the Id. A.R that no infirmity as regards the levy of fees for the said year did emerge from the order of the ACIT, CPC, Ghaziabad. In order to drive home his aforesaid contention that now when Sec.234E enabling the levy of fees in itself was made available in Sec.200A with effect from 01.06.2015, therefore, no fees under the aforesaid statutory provision could have been validly imposed on the assessee in A.Y. 2013-14 to A.Y. 2015-16, support was drawn from the judgment of the Hon'ble High Court of Karnataka in the case of Fatehraj Singhavi & Ors. Vs. Union of India & Ors.(2016) 142 DTR 281 (Kar) and the orders of the coordinate benches of the Tribunal viz. (i) ITAT, Mumbai in the case of Permanent Magnets Ltd.

Vs. DCIT-CPC, (TDS) (ITA No.6436 to 6442/Mum/2018, dated 05.08.2019); (ii) ITAT, Pune Bench "B", Pune in the case of Gajanan Constructions and Ors Vs. DCIT, CPC (TDS), Ghaziabad (ITA No.1292 & 1293/Ph/2015); (iii) ITAT "H" Bench, Mumbai in the case of Kamala Enterprises Vs. ITO (TDS), Mumbai (ITA No. 3324/Mum/2015), dated 31.03.2017; and (iv) ITAT , Agra Bench, Agra, in the case of State Bank of India, Gwalior Vs. ITO (TDS) (ITA No. 03, 06 & 07/Agra/2018, dated 31.05.2018). (copies of orders placed on record). In the aforesaid judicial pronouncements, it was observed, that in the course of processing of 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.

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the CIT(A) and submitted, that as the assessee had delayed the filing of the respective statements of tax deduction at source for the aforesaid respective quarters in Forms 26Q/24Q, therefore, the ACIT, CPC had rightly levied fees under Sec.234E in its hands.

6. 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. Admittedly, it is a matter of fact borne from the records, that the assessee had delayed the filing of the statements of tax deduction at source in "Forms 26Q/24Q" for the aforementioned quarters pertaining to the captioned years under consideration i.e A.Y. 2013-14, 2014-15, A.Y. 2015-16 and A.Y 2016-17. We find that the **Hon'ble High Court of Karnataka** in the case of **Fatehraj Singhvi Vs. Union of India (2016) 289 CTR 602 (Kar)**, had concluded, that the notice under Sec.200A of the Act computing fee under Sec.234E, to the extent the same related to the period of the 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 Paints & Coating Ltd. Vs. DCIT (2018) 167 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."

7. As regards the levy of fees under Sec.234E for A.Y. 2016-17 is concerned, we find that as the statements of TDS for the first quarter therein involved was to be filed latest by 15.07.2015, i.e. subsequent to the cut off period of 01.06.2015 (the date on which the section enabling levy of fees under Sec.234E was made available in Sec.200A), therefore, no infirmity arises from the imposition of the aforesaid fees in the hands of the assessee. In fact, as observed by us hereinabove, the Id. A.R had admitted that he is not assailing the levy of fees under Sec.234E insofar the delay involved in filing of the statement of TDS for A.Y. 2016-17 is concerned. Accordingly, we are of the considered view that in terms of our aforesaid observations the fees levied by the ACIT, CPC, Ghaziabad under Sec.234E for A.Y. 2013-14, 2014-15 and A.Y. 2015-16 cannot be sustained and is thus deleted. On the other hand, finding no infirmity in the order of the ACIT, CPC as regards levy of fees under Sec.234E for A.Y. 2016-17, we uphold the same.

8. Resultantly, the appeals of the assessee for A.Y. 2013-14 in ITA No. 6499/Mum/2018, A.Y. 2014-15 in ITA No.6500/Mum/2018 and A.Y. 2015-16 in ITA No. 6501/Mum/2018 are allowed in terms of our aforesaid observations. The appeal of the assessee for A.Y. 2016-17 in ITA No.6502/Mum/2018 is dismissed.

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