

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 2885 & 2886/Bang/2018
Assessment Years : 2013-14 & 2014-15

M/s. Nivis Lifecare Property Pvt. Ltd., Samruddhi, No. 76, Flat No. 102, 2 nd Floor, AECS Layout, 2 nd Main, 3 rd Stage, Sanjayanagar, Bangalore – 560 094. PAN: AACCN5975A	Vs.	The Assistant Commissioner of Income Tax, CPC – TDS.
APPELLANT		RESPONDENT
Assessee by	:	None
Revenue by	:	Dr. S. Palani Kumar, Addl. CIT (DR)
Date of hearing	:	10.10.2019
Date of Pronouncement	:	22.11.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

These two appeals are filed by the assessee which are directed against the combined order of Id. CIT(A)-9, Bangalore dated 20.08.2018 for Assessment Years 2013-14 and 2014-15. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2013-14 in ITA No. 2885/Bang/2018 are as under.

“1. The learned commissioner (appeals) order is entirely contradictory to law and facts of the case to the extent he allowed the appeals based on the Hon'ble Karnataka High court decision in the case of Fatheraj Singvi and others v union of India reported in 2016(86) Kar.L.J 563 (HC)(DB) and reversing the benefit by holding the TDS returns are non-est under the I T Act.

2. The learned commissioner (appeals) was wrong in holding that the appellant should have paid the late fee u/s 234E before filing the TDS returns without observing the fact that the enabling section 200A to levy late fee was amended w.e.f 1.6.2015 which is prospective in nature and not applicable for Assessment periods prior to 1.6.2015.

The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing of this

appeal.”

3. The grounds raised by the assessee for Assessment Year 2014-15 in ITA No. 2886/Bang/2018 are as under.

“1. The learned commissioner (appeals) order is entirely contradictory to law and facts of the case to the extent he allowed the appeals based on the Hon'ble Karnataka High court decision in the case of Fatheraj Singvi and others v union of India reported in 2016(86) Kar.L.J 563 (HC)(DB) and reversing the benefit by holding the TDS returns are non-est under the I T Act.

2. The learned commissioner (appeals) was wrong in holding that the appellant should have paid the late fee u/s 234E before filing the TDS returns without observing the fact that the enabling section 200A to levy late fee was amended w.e.f 1.6.2015 which is prospective in nature and not applicable for Assessment periods prior to 1.6.2015.

The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing of this appeal.”

4. In course of hearing, it was submitted by Id. AR of assessee that as per the impugned order, it is held by Id. CIT(A) that TDS returns filed by the assessee are non-est under the IT Act because the assessee has not paid the prescribed fee before filing these TDS returns. He submitted that for this issue, the matter is squarely covered in favour of the assessee by the Tribunal order rendered in the case of Shri Mysore Raghavendra Rao Gopinath vs. ACIT in ITA Nos. 2887 & 2888/Bang/2018 dated 12.07.2019. He also submitted that in this case, the tribunal has followed another tribunal order rendered in the case of Manoj Kumar Jaiswal vs. ACIT in ITA No. 2658/Bang/2018 dated 22.03.2019. He submitted a copy of both these tribunal orders. The Id. DR of revenue supported the order of Id. CIT(A).
5. We have considered the rival submissions. We find that this issue was decided by Id. CIT(A) as per para no. 26 of his order which is reproduced hereinbelow for ready reference.

“26. However, I hold that the section 234E mandates that the appellant should have paid the prescribed fee before filing its TDS returns. The appellant has not paid the prescribed fee before filing its TDS returns. Therefore, it is held that all these TDS returns filed by the appellant are non-est under the IT Act.”

6. We also reproduce para no. 6 from the Tribunal order rendered in the case of Shri Mysore Raghavendra Rao Gopinath vs. ACIT (Supra) cited by Id. AR of assessee. This para reads as under:-

“6. The ld. DR of revenue could not point out any difference in facts in present case and in that case and therefore, respectfully following this Tribunal order, we hold that the conclusion of CIT(A) holding that return of TDS filed by the assessee is non-est in law is not valid in the eyes of law and to this extent, his direction is deleted and the order of CIT(A) to this extent is held to be bad in law.”

7. Respectfully following this Tribunal order, the issue in dispute is decided in favour of the assessee and it is held that the finding of the learned CIT (A) in Para 26 as reproduced above to the effect that TDS Returns filed by the assessee are non-est is not valid in the eyes of law and to this extent, it is deleted and the order of CIT (A) to this extent is held to be bad in law.
8. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 22nd November, 2019.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.