

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

**Before Shri S.Rifaur Rehman, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA Nos.4849 to 4851/Mum/2018  
(Assessment Years: 2014-15 to 2016-17)**

Sharayu Dilip Bapat  
18A, Gujarati Mandal Rd,  
Vile Parle East, Mangal Prabha Apt.,  
Mumbai – 400 057

Asst. Commissioner of  
Income Tax, CPC (TDS),  
Vs. Mumbai.

PAN – ABQPB9980K

**(Appellant)**

**(Respondent)**

Appellant by: Shri Rakesh Joshi, A.R  
Respondent by: Shri V. Vinod Kumar, D.R

Date of Hearing: 27.11.2019  
Date of Pronouncement: 29.11.2019

**ORDER**

**PER RAVISH SOOD, JM:**

The present appeals filed by the assessee are directed against the respective orders passed by the CIT(A)-60, Mumbai, dated 19.06.2018, 14.06.2018 and 14.06.2018 for A.Y. 2014-15, A.Y. 2015-16 and A.Y. 2016-17, which in turn arises from the respective intimations received from the Assistant Commissioner of Income Tax, Central Processing Cell-TDS, Ghaziabad under Sec.200A of the Income Tax Act, 1961 (for short 'Act'), dated 28.04.2016. As a common issue is involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first advert to the appeal of the assessee for A.Y. 2014-15. The assessee has assailed the impugned order on the basis of the following grounds of appeal :

- “1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in

- levying a late filing fees of Rs.49,556/- u/s.234E of the Income Tax Act, 1961, without considering the facts and circumstances of the case.
2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in raising demand of Rs.18,562/- on account of alleged interest on late payment, without considering the facts and circumstances of the case.
  3. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

2. Briefly stated, the assessee had delayed the filing of the statement of tax deduction at source in 'Form No. 26QB' for A.Y. 2014-15. Resultantly, the ACIT, Central Processing Cell-TDS levied late filing fees under Sec. 234E of Rs.49,556/- and also interest on late payment under Sec. 201 of Rs.18562.50.

3. Aggrieved, the assessee assailed the imposition of late filing fees under Sec.234E, and also the levy of interest on late payment before the CIT(A). It was claimed by the assessee, that Sec. 200A (prior to its amendment w.e.f 01.06.2015) did not provide for levy of fee under Sec. 234E at the time of processing of the TDS statement. It was submitted by the assessee that the provisions of Sec.200A were amended only w.e.f 01.06.2015, so as to unable computation of fee payable under Sec.234E at the time of processing of the TDS statement. In sum and substance, it was the claim of the assessee that no fee under Sec.234E could be levied for the period prior to 01.06.2015. However, the aforesaid claim of the assessee did not find favour with the CIT(A). Observing, that even for the period prior to 01.06.2015 the charging of fee under Sec.234E was a part of the statute which called for a levy of fee for default in furnishing the statements, the CIT(A) rejected the aforesaid claim of the assessee. Also, taking cognizance of the fact that the dates of filing of statement and also the intimation order received from CPC were subsequent to 01.06.2015, therefore, the CIT(A) did not find favour with the aforesaid claim of the assessee and upheld the fee levied under Sec.234E of the Act.

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 submitted that as Sec.200A which enabled the A.O to charge fee under Sec. 234E was prospectively made effective from 01.06.2015, therefore, no fee under Sec.234E could have been levied for the assessment years prior to 01.06.2015. In support of his aforesaid contention the Id. A.R had relied on the judgment of the Hon'ble High Court Karnataka in the case of Fatehraj Singhavi Vs. Union of India (2016) 289 CTR 602 (Kar). Accordingly, it was averred by

the Id. A.R, that no fee under Sec.234E could have been validly levied for two of the aforementioned years (out of three years), viz. A.Y. 2014-15 & A.Y. 2015-16, as the same were relatable to the period prior to 01.06.2015. Insofar the third year was concerned, viz. A.Y. 2016-17, it was submitted by the Id. A.R, that he was not pressing the levy of fee under Sec.234E for the said year.

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the order of the CIT(A). It was submitted by the Id. D.R, that as the date of filing of the statement and also the date of the intimation received from CPC, TDS were subsequent to 01.06.2015, therefore, the CIT(A) had rightly upheld the levy of fees under Sec.234E of the Act.

6. Admittedly, the assessee had delayed the filing of the statement of tax deducted at source in 'Form No. 26Q' for the Financial Year 2013-14. As observed by us hereinabove, on the basis of an intimation under Sec. 200A late filing fee under Sec. 234E of Rs. 49,556/- along with interest on late payment of Rs.18,562/- was levied on the assessee. We find that the assessee has assailed before us the order of the CIT(A), who we find had sustained the levy of late filing fee under Sec.234E and also the interest charged on late payment under Sec 201.

7. 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 observed that the notice under Sec.200A computing fee under Sec. 234E, to the extent the same was levied in respect of the period of tax deduction prior to 01.06.2015 could not be sustained and 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 his TDS return in “Form 26Q” for the Financial year 2013-14 i.e the period prior to 01.06.2015 (the 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 no fees under Sec.234E could have been charged in the course of processing of the statement of tax deducted at source under Sec. 200A, for the period prior to 01.06.2015. Accordingly, we are unable to persuade ourselves to subscribe to the view taken by the CIT(A), who we find had sustained the levy of late filing fees under Sec. 234E of Rs. 49,556/- on the assessee. Resultantly, we set aside the late filing fee of Rs. 49,556/- levied under Sec.234E by the ACIT, Central Processing Cell-TDS, Ghaziabad. As regards the levy of interest of Rs. 18,562.50 on late payment under Sec. 201, we find that the Id. A.R had not raised any submissions as regards the same in the course of hearing of the appeal. Apparently, as the interest under Sec. 201 has been levied for the delay in depositing of the statutory dues by the assessee, therefore, finding no reason to dislodge the sustaining of the said levy of interest by the CIT(A), we uphold his order to the said extent.

8. Resultantly, the appeal of the assessee is partly allowed in terms of our aforesaid observations.

**A.Y. 2015-16**  
**ITA No. 4850/Mum/2018**

9. We shall now advert to the appeal of the assessee for A.Y 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us :

- “1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in Levying a late filing fees of Rs.39,199/- u/s.234E of the income Tax Act, 1961, without considering the facts and circumstances of the case.
2. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

10. Briefly stated, the assessee had delayed filing of the statement of tax deduction at source in 'Form No. 26QB' for A.Y. 2015-16. Resultantly, the ACIT, Central Processing Cell-TDS had inter alia levied late filing fees under Sec. 234E of Rs. 39,199.10 on the assessee.

11. Aggrieved, the assessee assailed the imposition of late filing fees under Sec.234E before the CIT(A). It was claimed by the assessee that Sec. 200A (prior to its amendment w.e.f 01.06.2015) did not provide for levy of fee under Sec. 234E at the time of processing of the TDS statement. It was submitted by the assessee that the provisions of Sec.200A were amended w.e.f 01.06.2015, so as to unable computation of fee payable under Sec.234E at the time of processing of the TDS statement. In sum and substance, it was the claim of the assessee that no fee under Sec.234E could be levied for the period prior to 01.06.2015. However, the aforesaid claim of the assessee did not find favour with the CIT(A). Observing, that even for the period prior to 01.06.2015, the charging of fee under Sec.234E was a part of the statute which called for a levy of fee for default in furnishing the statements, the CIT(A) rejected the aforesaid claim of the assessee. Also, taking cognizance of the fact, that the dates of filing of statement and also the intimation order received form CPC were subsequent to 01.06.2015, the CIT(A) did not find favour with the aforesaid claim of the assessee and upheld the fee levied under Sec.234E of the Act.

12. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the facts and the issue involved in the present appeal remains the same as was there before us in the appeal of the assessee for the immediately preceding year viz. A.Y 2014-15 in ITA 4849/Mum/2018, therefore, our order therein passed shall apply mutatis mutandis for disposal of the present appeal for A.Y 2015-16, in ITA No, 4850/Mum/2018. Accordingly, the levy of late filing fees under Sec. 234E of Rs. 39,199.10 is deleted.

13. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

**A.Y. 2016-17**  
**ITA No. 4851/Mum/2018**

14. We shall now advert to the appeal of the assessee for A.Y 2016-17. The assessee has assailed the impugned order by raising before us the following grounds of appeal:

- “1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in levying a late filing fees of Rs.3,600/- u/s.234E of the income Tax Act, 1961, without considering the facts and circumstances of the case.
2. The appellant craves leave to add, amend, alter or delete the said ground of appeal.”

15. At the time of hearing of the appeal, it was submitted by the Id. A.R that he was not assailing the levy of late filing fees under Sec. 234E for the captioned year, as the same pertained to the period subsequent to 01.06.2015 (the date from which the amendment enabling levy of fees under Sec. 234E was made available in Sec.200A). Accordingly, on the basis of the concession of the Id. A.R the captioned appeal of the assessee for A.Y 2016-17 is dismissed as not pressed.

16. The appeal is dismissed as not pressed.

17. Resultantly, the appeals of the assessee viz. for A.Y 2014-15, ITA No. 4849/Mum/2018 is partly allowed, the appeal for A.Y 2015-16 is allowed, and for A.Y 2016-17 is dismissed as not pressed.

Order pronounced in the open court on 29/11/2019.

Sd/-  
(S. Rifaur Rehman)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 29.11.2019  
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