

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1728 to 1735/Bang/2019

Assessment years : 2013-14 & 2014-15

Nestor Infotech Solutions Pvt. Ltd., No.539, Third Floor, Ashwini Complex, CMH Road, Indira Nagar, Bengaluru-560 038. PAN – AADCN 1170 G	Vs.	The Asst. Commissioner of Income-tax, CPC (TDS), Ghaziabad.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep C, C.A
Respondent by	:	Smt. R Premi, Addl. CIT

Date of hearing	:	09.12.2019
Date of Pronouncement	:	09.12.2019

ORDER

Per Bench :

The assessee has filed these appeals challenging the orders passed by Id CIT(A) in respect of demand raised upon the assessee u/s 234E and consequent interest levied u/s 220(2) of the Act.

2. We heard the parties and perused the record. The Id AR submitted that the TDS returns furnished by the assessee were processed u/s 200A prior to 1.6.2015, wherein fee u/s 234E for late filing of TDS returns were levied and also consequent interest u/s 220(2) of the Act was charged. The assessee filed subsequently

multiple correction statements to the TDS returns filed by it originally. Hence rectification orders came to be passed u/s 154 of the Act consequent to the correction statements filed by the assessee. In the rectification statements also, the demand u/s 234E and 220(2) of the Act were reflected. Hence the assessee filed the appeals before Id CIT(A) challenging the levy of fee u/s 234E of the Act and consequent levy of interest us/ 220(2) of the Act. However the Id CIT(A) has taken the view that the demand u/s 234E and 220(2) has been raised in the original order and hence the assessee should have challenged the said orders and not the orders passed u/s 154 of the Act. Accordingly the Ld CIT(A) has dismissed all the appeals filed by the assessee.

3. The Id AR submitted that the demand raised u/s 234E and 220(2) of the Act also arises out of order passed us/ 154 of the Act and since the assessee was pursuing the matter relating to TDS returns by filing rectification petitions, the Id CIT(A) should have adjudicated the appeal on merits also. In this regard the Id AR placed his reliance on the order dated 3/7/2019 passed by coordinate bench in the case of M/s Purvankara Ltd. (ITA No.1995/Bang/2018). The Id AR submitted that, on almost identical set of facts, the Tribunal has restored the appeal to the file of the Id CIT(A) to treat the appeal filed by the assessee as the appeals filed against the original order, if a petition is filed by the assessee before him along with the request for condonation of delay. The Id AR accordingly pleaded that the Id CIT(A) should be directed to admit the appeals of the assessee.

4. We heard the Id DR and perused the record. We noticed that the coordinate bench has dealt with almost an identical issue in the case of Purvankara Ltd. (Supra) and the matter has been restored to the file of Id CIT(A) with the following observations:-

"5. We have considered the rival submissions. First of all, we reproduce para 4 of the order of Id. CIT(A) for ready reference.

"4. It is clear from the reliance on the several decisions by the Assessing Officer in support of the view that the charging of interest u/s 201 (A) is mandatory and by the appellant to support the view that in the facts of the case the interest u/s 201 (A) is not chargeable, the issue is debatable and therefore same does not come under The purview of 'mistake apparent from record' rectifiable u/s 154 of the Act. In such circumstances, the undersigned does not find any infirmity in the rejection of application u/s 154. Accordingly, the appeal is dismissed."

6. The present proceedings were initiated by the order passed by the AO u/s 154 in which he noted the submission of the assessee that there was a problem with HDFC Bank E-net facility. In spite of this, the AO has levied the interest u/s. 201 (IA) of IT Act by holding that charging of interest u/s. 201 (1A) is mandatory. In the same order passed by the AO u/s. 154, it is noted by the AO that assessee has written a

letter dated 01 .01.2010 seeking rectification of the order passed u/s. 201(1A) of the IT Act, 1961 on 23.12.2009 raising a demand of Rs. 7,56,143/-. In our considered opinion, if the appeal of the assessee against this order passed by the AO u/s. 154 is considered and decided as an appeal against the original order dated 23.12.2009 passed by the AO u/s. 201(1A) of the IT Act, then the assessee's arguments can be considered and decided on merit instead of dismissing the same at the threshold on this basis that this is a debatable issue and hence, cannot be considered u/s. 154. In the interest of justice and in view of the facts noted above, we feel it proper to restore back the entire issue in the present appeal to the file of Id. CIT(A) for a fresh decision. If the assessee makes a request before Id. CIT(A) to treat this appeal of the assessee as an appeal against the original order passed by the AO u/s. 201(1A) of the IT Act dated 23.12.2009 along with a request for condonation of delay because the present appeal was filed by the assessee before Id. CIT(A) on 09.04.2010 as noted by Id. CIT(A) on page no. 1 of his order and therefore, if this appeal is considered as an appeal against the original order passed by the AO u/s. 201(1A) dated 23.12.2009, then there is a delay in filing appeal before Id. CIT(A) and hence, if the assessee makes request for condonation of such delay, the Id. CIT(A) should first decide about the

request for condonation of the delay and if he condones the delay, then he should decide the appeal of the assessee by considering this appeal as an appeal against the original order passed by the AO u/s. 201(1A) of the IT Act dated 23.12.2009. In view of this decision, no further adjudication is called for on merit and we do not make any comment on the merit.”

5. Accordingly following the above said order passed by coordinate bench, we set aside all the orders passed by the ld CIT(A) and restore all the appeals to the file of ld CIT(A) with identical direction.

6. In the result, all the appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on **9th December, 2019.**

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 9th **December**, 2019.

/Vms/

Copy to:

1. Appellant (s) / Cross Objector(s)
2. Respondent(s)
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
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