

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2330/Del/2017
(Assessment Year: 2016-17)**

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| R.R. Enterprises, Z-45, Okhla Industrial Area, Phase-II, New Delhi-110020. | Vs . | Assistant Commissioner of Income Tax, CPC-TDS, Vaishali, Ghaziabad (UP). |
| PAN No: AAAHR4142Q | | |
| APPELLANT | | RESPONDENT |

Assessee by : None
Revenue by : Shri Surender Pal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, AM

[A] This appeal has been filed by the Assessee against the impugned appellate order dated 31.01.2017 passed by Learned Commissioner of Income Tax (Appeals)-41, Delhi, [in short, "Ld.CIT(A)"] pertaining to Assessment Year 2016-17. The Assessee has raised following grounds of appeal:-

- "1. *That under the facts and circumstances of the case, it was not justified on the part of the department to levy the late filing fees u/s 234E of the I.T. Act amounting to Rs. 12,800/- relevant to 2nd Quarter- July 2015 to September 2015.*

That the appellant had duly deposited the total TDS with the Bank and the late filing of return was only a procedural in nature and did not result into any loss of revenue.

That the appellant had a reasonable cause for not filing the return in time and no fee for late filing deserves to be levied.

2. *That the orders of the lower authorities are not justified on facts and same are bad in law.*
3. *That the assessee craves the right to add, amend, delete or substituted any ground of appeal."*

[B] The Assessing officer ("AO", for short) issued Intimation under Section 200A of the Income Tax Act, 1961 ("I.T.", for short) dated 22.12.2015, wherein late filing fee amounting to Rs. 12,800/- was charged under Section 234E of I.T. Act. The Assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 31.01.2017, the Ld. CIT(A) dismissed the assessee's appeal. The relevant portion of the order dated 31.01.2017 of the Ld. CIT(A) is reproduced as under:

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4.1 I have carefully considered the facts of the case and have also gone through the order u/s 200A dated 22.12.2015 passed by the ACIT, CPC-TDS. All the grounds being similar are being taken up together for rational adjudication .

4.2 In the written submission filed the Counsel of the appellant has claimed that the levy of late filing fees u/s 234E of the Income Tax Act for Rs. 12,800 by the Ld. ACIT, CPC-TDS for delay in filing of TDS statement as per intimation u/s 200A of I.T. Act is unjustified. I have carefully considered the ground raised and submissions made by the appellant. The appellant has filed its TDS Statement in 26Q for the IInd Quarter of Financial Year 2015-16 (A.Y. 2016-17) on 18.12.2015, i.e. beyond the due date. While processing the statement, fee has been charged u/s 234E of I.T. Act for late filing of the statement.

4.3 The only issue in appeal is levy of fee u/s 234E at the time of processing of the impugned TDS statement even though TDS was timely deducted and deposited. Section 234E was inserted by Finance Act 2012 in the IT Act and came into effect from 01.07.2012. This section provided that in case of failure to deliver the TDS statement beyond the time prescribed under sub-section (3) of section 200 of the I.T. Act, a person shall be liable to pay a fee amounting to Rs. 200/- for every day during which the failure continues, subject to not exceeding the amount of tax deductible. As the appellant has filed the TDS statement beyond the date prescribed, in the

intimation u/s 200A DCIT, CPC-TDS has charged late filing fee, against which the present appeal has been instituted.

4.4 Section 200A, which deals with processing of statements of tax deducted at source has been subsequently amended by Finance Act 2015. The amendment came into effect from 01.06.2015 and inserted new clauses (c) and (d) in Section 200A bringing clarification that during processing of a TDS statement the fee, if any, shall be computed in accordance with the provisions of section 234E.

4.5 The appellant's only plea is that fee u/s 234E should not be levied in its case based on its good/bonafide conduct and that it had deducted and deposited TDS in time. That delay in filing of TDS return was merely procedural and that there was no loss to Revenue.

5. However, I am unable to agree with the appellant due to the following reasons.

5.1 Section 234E has been brought into the statute w.e.f 01/07/2012. The appellant's case pertains to the period during which section 234E was effective. The issue of the constitutional validity of the fee charged under section 234E has been decided by the Hon'ble High Court of Bombay in the case of **Rashmikanth Kundalia V/s Union of India 2015 (54) Taxman.com 200 (Bombay)**.

5.2 By a Writ Petition filed under Article 226 of the Constitution of India, the Petitioners had challenged the constitutional validity of section 234E of the Income Tax Act, 1961. The Hon'ble High Court in the order dated 06/02/2015 held that the charging of fee u/s 234E is constitutionally valid. While dismissing the writ filed by the petitioners, the Hon'ble Bombay High Court observed:

"13. It is not in dispute that as per the existing provisions, a person responsible for deduction of tax (the deductor) is required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date. Undoubtedly, delay in furnishing of TDS return/statements has a cascading effect. Under the Income Tax Act, there is an obligation on the Income Tax Department to process the Income tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deductions is furnished by the deductor within the prescribed time. The timely processing of returns is the bedrock of an efficient tax administration system. If the income tax returns, especially having refund claims, are not processed in a timely manner, then (i) a delay occurs in the granting of credit of TDS to the person on whose behalf tax is deducted (the deductee) and consequently leads to delay in issuing refunds to the deductee, or raising of infructuous demands against the deductee; (ii) the confidence of a general taxpayer on the tax administration is eroded; (iii) the late payment of refund affects the Government financially as the Government has to pay interest for delay in granting the refunds; and (iv) the delay in receipt of refunds results into a cash flow crunch, especially for business entities.

14. We find that the Legislature took note of the fact that a substantial number of deductors were not furnishing their TDS return/statements within the prescribed time frame which was absolutely

essential. This led to an additional work burden upon the Department due to the fault of the deductor by not furnishing the information in time and which he was statutorily bound to furnish. It is in this light, and to compensate for the additional work burden forced upon the Department, that a fee was sought to be levied under section 234E of the Act. Looking at this from this perspective, we are clearly of the view that section 234E of the Act is not punitive in nature but a fee which is a fixed charge for the extra service which the Department has to provide due to the late filing of the TDS statements.

15. As stated earlier, due to late submission of TDS statements means the Department is burdened with extra work which is otherwise not required if the TDS statements were furnished within the prescribed time. This fee is for the payment of the additional burden forced upon the Department. A person deducting the tax (the deductor), is allowed to file his TDS statement beyond the prescribed time provided he pays the fee as prescribed under section 234E of the Act. In other words, the late filing of the TDS return/statements is regularised upon payment of the fee as set out in section 234E. This is nothing but a privilege and a special service to the deductor allowing him to file the TDS return/statements beyond the time prescribed by the Act and/or the Rules."

5.3 The constitutional validity of Section 234E was also challenged before the Hon'ble High Court of Karnataka in the case of **Lakshminirman Bangalore (P) Ltd. V/s DCIT, Ghaziabad [(2015) 60 taxmann.com 144]**, which was decided by the Hon'ble High Court on 12th June 2015 and the section has been held intra vires. The Hon'ble Karnataka High Court has made the following observations:

"20. There cannot be any dispute to the fact that assessee is required to file e>Returns to Central Processing Centre - CPC for processing of statements of tax deducted at source vide Section 200A, which provision is in para materia with Section 143(1). While processing the return of income under Section 143(1)(a) no personal hearing is provided to an assessee and as such the same is also not provided under Section 200A. Thus, the doctrine of principles of natural justice is given a go by under impugned provision or its violation thereof would not be a ground available to the petitioners to challenge the impugned provision on this ground. Hence, contention raised in this regard is without merit and stands rejected.

21. A person responsible for deduction of tax namely deductor is required to furnish periodical statements containing the details of deduction of tax within the prescribed due date. Any delay in furnishing TDS statements would result in perennial problems being faced by the department while processing the return of income filed by the assessee. When a return of income is filed by an assessee a statutory obligation is cast on the department to process the said return of income within the specified period from the date of filing. If for want of details such return of income not being processed or assessment order not being framed or would be stalled or in other words the return of income filed by an assessee on whose behalf the tax has already been deducted by the deductor is not furnished within the prescribed time by such deductor, it would consequently have cascading effect namely, it would stall the processing of the return of income filed by the deductee. In a given case, there might be instances of where the assessee would be entitled to refund and on account of delay occurring due to non-delivery of TDS statements by the deductors, it would result in delay in extending the credit of TDS to the person on whose behalf tax is deducted and consequently it would result in delayed issuance of refunds to the deductee or raising of consequential demands against the deductee which otherwise would not have been raised. In this lengthy and unwarranted process it may erode the confidence reposed by the tax payer on the department. Last but not the least, it would result in financial burden to the

Government namely on account of late payment of refund interest is to be paid on such refunds and it would also result in cash flow crunch, especially for business entities.

22. It also requires to be noticed that Division Bench of High Court of Judicature at Mumbai in the case of Rashmikanth Kundalia (supra) disposed of on 06.02.2015 had an occasion to examine the constitutional validity of Section 234E and while upholding its validity and arriving at a conclusion that it is *intra vires* of the Constitution has opined as under:

"18. We are therefore clearly of the view that the fee sought to be levied under Section 234E of the Income Tax Act, 1961 is not in the guise of a tax that is sought to be levied on the deductor. We also do not find the provisions of Section 234E as being onerous on the ground that the Section does not empower the Assessing Officer to condone the delay in late filing of the TDS return/statements, or that no appeal is provided for from an arbitrary order passed under Section 234E. It must be noted that a right of appeal is not a matter of right but is a creature of the statute, and if the Legislature deems it fit not to provide a remedy of appeal, so be it. Even in such a scenario it is not as if the aggrieved party is left remediless. Such aggrieved person can always approach this Court in its extraordinary equitable jurisdiction under Article 226/227 of the Constitution of India, as the case may be. We therefore cannot agree with the argument of the Petitioners that simply because no remedy of appeal is provided for, the provisions of Section 234E are onerous. Similarly, on the same parity of reasoning, we find the argument regarding condonation of delay also to be wholly without any merit".

This Court is in complete agreement with the view expressed by Mumbai High Court and as such contention of the petitioners cannot be accepted for this reason also."

5.4 The Hon'ble Rajasthan High Court in the case of **M/S Dundlod Shikshan Sansthan Vs Union Of India (2015) 63 taxmann.com 243 (Rajasthan)** vide order dated 28 July, 2015 has followed the decision of High Court of Bombay in the case of Rashmikant Kundalia and upheld the constitutional validity of Section 234E and has also decided the issue of legality of orders passed under section 200A levying late filing fee u/s 234E even prior to 1.06.2015. The relevant para is reproduced below:-

"8. In the present case, the fee was levied under section 200 for late filing of the returns, prior to the amendments made by the Finance Act, 2015 with effect from 1.6.2015 in Sections 200A, 246A and 272A providing for computation and appeal. We do not find that even prior to these amendments the imposition of fee was illegal. We do not in exercise of the power under Article 226 of the Constitution of India find any valid reasons or justification to interfere with the compensatory fees imposed for late filing of the TDS returns on flat rates. The absence of any provision for condonation of delay and the appeal prior to amendments also did not make the imposition of late fees by Section 234E to be *ultra vires*."

5.5 It is also worth mentioning that the fee u/s 234E is required to be mandatorily paid by the deductor at the time of submission of the TDS statement, calculated at the rate of Rupees two hundred per day. There is no provision in the Act which allows for waiver from the payment of such fees on grounds like the ones raised by the appellant. Any such condonation of delay or leniency would mean punishing the law abiding deductors who had duly calculated the fees u/s 234E and paid the same.

Non levy of the fee would mean punishing the honest and rewarding the guilty, which can never be the intention of the legislature.

5.6 In a recent judgment the Kerala High Court in the case of Shree Narayana Guru Smarak Sangam Upper Primary School vs UOI & Ors in December 2016 has further upheld the levy of fee u/s 234E and has held that "on account of the additional work burden which has fallen upon the department due to the fault of the deductor that a fee has been levied." Hence the claim of the appellant that late filing was only procedural and did not result in any loss to Revenue has no bearing on the levy of fee u/s 234E.

5.7 In light of the above discussion and respectfully following the decisions of various the Hon'ble High Courts in the cases of **Rashmikant Kundalia V/s Union of India 2015 (54) Taxman.com 200 (Bombay)**, **Lakshminirman Bangalore (P) Ltd. V/s DCIT, Ghaziabad [(2015) 60 taxmann.com 144]**, **M/s Dundlod Shikshan Sansthan Vs Union of India and Shree Narayana Guru Smarak Sangam Upper Primary School vs UOI & Ors.** cited supra, the grounds the grounds of appeal filed by the appellant are dismissed. "

[C] This present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 31.01.2017 of the Ld. CIT(A). At the time of hearing, Revenue was represented by Shri Surender Pal, the learned Senior Departmental Representative ("Ld. Sr. DR", for short). However, none was present from the assessee's side. In the absence of any representation from assessee's side, at the time of hearing before us, we heard the Ld. Sr. DR; who relied upon the order dated 22.12.2015 of Intimation under Section 200A of I.T.Act and the aforesaid impugned order dated 31.01.2017 of the Ld. CIT(A). After perusal of the materials on record, including the aforesaid order dated 22.12.2015 and impugned order dated 31.01.2017 of the Ld. CIT(A), we find that the Ld. CIT(A) has passed speaking order on merits. Relevant portion of the impugned order of the Ld. CIT(A) has already been reproduced in foregoing paragraph **[B]** of this order. We find that the Ld. CIT(A) has given detailed

reasons for his decision on merits in the aforesaid impugned appellate order dated 31.01.2017 of Ld. CIT(A). During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short) no material has been brought for our consideration to persuade us to take a view different from the view taken by the Ld. CIT(A) in the impugned order on merit. After hearing the Ld. Sr. DR and after perusal of materials on record, and further, in view of the foregoing discussion, we decline to interfere with the aforesaid impugned appellate order dated 31.01.2017 of Ld. CIT(A), and accordingly, this appeal is dismissed.

[D] Before we part; we explicitly clarify that the assessee will be at liberty to approach ITAT for restoration of the appeal in accordance with Proviso to Rule 24 of Income Tax (Appellate Tribunal), Rules, 1963. If the assessee does approach ITAT for restoration of the appeals in ITAT, the matter will be considered in accordance with law having regard to the facts and circumstances.

[E] In the result, appeal filed by Assessee is dismissed.

Order pronounced in the open court on 17/12/2019.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 17/12/2019
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr. PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr. PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |