

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T. A Nos.1547, 1548, 1549, 1551 & 1552/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Sila Projects Management Services Pvt. Ltd. (Formerly known as CM & D Sila Development Service India Pvt. Ltd.) 1, Gordhan Building, 2 <sup>nd</sup> Floor, Dr. Parekh St. Behind Girguam Court, Prarthna Samaj, Mumbai.	<b>बनाम/</b> Vs.	ACIT(TDS)-CPC, Ghaziabad & ITO (TDS)- 1(1)(4) K.G. Mittal Aayurvedic Pracher Sanstha Bldg., Mumbai-400002.
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आयकर अपील सं/ I.T. A Nos.1550, 1553, 1554, 1555 & 1556/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2015-16)

Sila Projects Management Services Pvt. Ltd. (Formerly known as CM & D Sila Development Service India Pvt. Ltd.) 1, Gordhan Building, 2 <sup>nd</sup> Floor, Dr. Parekh St. Behind Girguam Court, Prarthna Samaj, Mumbai.	<b>बनाम/</b> Vs.	ACIT(TDS)-CPC, Ghaziabad & ITO (TDS)- 1(1)(4) K.G. Mittal Aayurvedic Pracher Sanstha Bldg., Mumbai-400002.
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आयकर अपील सं/ I.T. A No.5749/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2015-16)

CM & D Sila Development Services India Pvt. Ltd. 2 <sup>nd</sup> Floor, Gordhan Building, Parekh Street, Prathana Samaj, 400004.	<b>बनाम/</b> Vs.	ACIT (TDS)-CPC Ghaziabad & Ward 5(1)(3) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFCC2550B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Rajesh Mehta
Revenue by:	Ms. Surabhi Sharma (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 12/12/2019  
घोषणा की तारीख /Date of Pronouncement: 19/12/2019



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## **आदेश / ORDER**

### **PER AMARJIT SINGH, JM:**

The assessee has filed the above mentioned appeals against the respective orders passed by CIT(A)-59 & 60, Mumbai dated 28.08.2017 & 12.07.2018 relevant to the A.Ys. 2014-15 & 2015-16, which in turn arises from the respective intimations received from the ACIT, Central Processing Cell-TDS, Ghaziabad under Sec.200A of the Income Tax Act, 1961 (for short 'Act') dated 11.08.2015. Since the common question of law and facts are involved in all these appeals, therefore, all appeals are being taken up together for adjudication.

2. First we shall take up the appeal of the assessee for the A.Y. 2014-15 in which the assessee has taken the following grounds:-

- “1. That The Ld. Assessing officer (TDS-CPC) erred in levying and CIT(A) erred in confirming levy of late fee u/s 234E of Rs. 16,360/- by way of processing TDS statement U/s 200A of the Act against the law and facts of the case.
2. That the sec.200A of the Act does not permit processing of TDS statement for default in payment of late fees, except any arithmetical error, or incorrect claim, or default in payment of interest any "I'DS payable or refundable etc before 01/06/2015. Hence late fees for TDS quarterly statement cannot be recovered by way of processing under section sec 200A. Therefore, demand notice cannot be issued under this section, hut if issued. then it is illegal. Hence liable to be cancelled.
3. That the Provisions of Sec.204 of the Act has made the person responsible for Sec. 190 to Sec. 203AA and Sec.285, this phrase does not cover Sec.234E, it means no one is responsible for default U/s 234E of the Act & none can be held responsible to deposit it, hence levy of late fee u/s 234E in absence of authority provided u/s 204 is against the law hence liable to be deleted.



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4. *That the TDS statement has been processed u/s 200A by TDS-CPC, whereas as per sec 200A(2), CBDT has not and cannot authorize TDS-CPC to levy late fee hence levy of late fee u/s 234E is without jurisdiction and against the law. Therefore, levy of late fee is liable to be deleted.*

*That the appellant craves leave to add, amend or withdraw any of the grounds of appeal."*

3. The brief facts of the case are that the assessee had delayed the filing of the statement of tax deduction at source in 'Form No.26QB' for the A.Y.2014-15. Resultantly, the ACIT, Central Processing Cell TDS levied late filing fees u/s 234E of Rs.16,360/- and also interest on late payment u/s 201 of Rs.1,977/-. Aggrieved by this order of the AO, the assessee filed an appeal before the CIT(A) who also dismissed the appeal of the assessee, therefore, the assessee has filed the present before us.

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the assessee has argued that according to Section 200A of the Act which unable the AO to charge fee u/s 234E of the Act was prospectively made effective w.e.f. 01.06.2015, therefore, no fee u/s 234E could have been levied for the assessment years prior to 01.06.2015. In support of this contentions the Ld. Representative of the assessee has placed reliance upon the decision of **Hon'ble High Court Karnataka in the case of Fatehraj Singhavi Vs. Union of India (2016) 289 CTR 602 (Kar)**. However, on the other hand, the Ld. Representative of the Department has strongly relied upon the order passed by the CIT(A) in question. It is not in dispute that the



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assessee has filed the statement of tax deducted at source in 'Form No.26Q' for the F.Y.2014-15 delayed. The AO has levied the late fees u/s 234E of Rs.16,360/- and interest in sum of Rs.1,977/- on the basis of an intimation u/s 200A of the Act. 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 u/s 200A of the Act computing fee u/s 234E of the Act would be effective in respect of the period of tax deduction subsequent to 01.06.2015. Thereafter, the Hon'ble ITAT Chandigarh in the case of **Sonalac Paint & Coating Ltd. Vs. DCIT (2018) 176 DTR 83 (Chd)** has 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 ACITTDS, 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*



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*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."*

**5.** Since the present case is pertaining to the period for the A.Y. 2014-15 earlier to 01.06.2015 (the date from which the amendment enabling levy of fees u/s 234E of the Act was made available in Section 200A), therefore, we are of the considered view that no fees u/s 234E could have been charged in the course of processing of the statement of tax deducted at source u/s 200A for the period prior to 01.06.2015, therefore, in the said circumstances, the finding of the CIT(A) is not justifiable, hence, we set aside the finding of the CIT(A) on these issues and delete the fees levied statutory dues provisions u/s 234E of the Act. Accordingly, all the issues are decided in favour of the assessee against the revenue.

**6.** Since all the appeals are having similar question of law and facts and are belonging to the period prior to 01.06.2015, therefore, the finding given above are applicable to the facts of all the appeals as mutatis mutandis. Accordingly, all appeals are hereby ordered to be allowed.



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7. In the result, the appeal filed by the assessee **is hereby ordered to be allowed.**

Order pronounced in the open court on 19/12/2019.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 19/12/2019

Vijay Pal Singh/Sr. PS

**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.

**आदेशानुसार/ BY ORDER,**

//सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**