

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI M. BALAGANESH (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5228/MUM/2018
Assessment Year: 2013-14**

M/s Sachhiyay Gold, 73/75, 1 st Floor, Sutariya Bhavan, Dhanji Street, Zaveri Bazar, Mumbai - 400003 PAN : AADPC1166C	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad U.P. 201010
(Appellant)		(Respondent)

**ITA No. 5229/MUM/2018
Assessment Year: 2013-14**

M/s Nakoda Gold, 202, 2 Mantri Smruti, Chitranjan Road, Vile Parle, Mumbai - 400003 PAN : AAAPJ8450H	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
(Appellant)		(Respondent)

**ITA No. 5230/MUM/2018
Assessment Year: 2013-14**

M/s Tulsi Gold, Office No. 1 & 2, 1 st Flr., 96/98, Sonawala Bldg., Dhanji Street, Zaveri Bazar, Mumbai - 400003 PAN : AAFFT4867M	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
(Appellant)		(Respondent)

**ITA No. 5231/MUM/2018
Assessment Year: 2013-14**

M/s Shree Mangal Palace, Shop No. 11, 11/13, Ladiwala, Chambers, Sheikh Memon Street, Zaveri Bazar, Mumbai - 400003	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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PAN : AABPJ7590F		
(Appellant)		(Respondent)

ITA No. 5232/MUM/2018
Assessment Year: 2013-14

M/s Sun Gold, 11, 2 nd Floor, 35/39, Pushpa Parag Soc., Mirza Street, Zaveri Bazar, Mumbai - 400003 PAN : AWAPS2735G	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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ITA No. 5233/MUM/2018
Assessment Year: 2013-14

M/s VIP's Jewellery, Shop No. 05A, 1 st Floor, 81, Chandra Darshan Building, Dhanji Street, Zaveri Bazar, Mumbai - 400002 PAN : AFDPC4721Q	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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ITA No. 5234/MUM/2018
Assessment Year: 2013-14

M/s Sundaram Chains Pvt. Ltd., 88/94, First Flr., Shop No. 1, Dhanji Street, Mumbai - 400003 PAN :AAICS1713M	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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ITA No. 5235/MUM/2018
Assessment Year: 2013-14

M/s Rishabh Gold, Office No. 102, Gr. Floor, 195/197, Mahavir Market, Shaikh Memon Street, Zaveri Bazar, Mumbai - 400002 PAN : ADYPD5380P	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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ITA No. 5236/MUM/2018
Assessment Year: 2013-14

M/s Nirmal Jewellers, Shop No. 10, 3 rd Agairy Lane, D.D. Plaza, Zaveri Bazar, Mumbai - 400003 PAN : AFOPB9508H	Vs.	The TDS-CPC, Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.P.- 201010
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Assessee by : Shri Nimesh Chothani/
Devendra Jain (ARs)

Revenue by : Shri Amit Pratap Singh (DR)

Date of Hearing: 27/11/2019
Date of Pronouncement: 28/11/2019

आदेश / O R D E R**PER BENCH**

The captioned appeals have been filed against the orders dated 28.06.2018 and 29.06.2018 passed by the Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-59, Mumbai, for the assessment years 2013-14, whereby Ld. CIT (A) has dismissed the appeals filed against the orders passed u/s 200A of the Income Tax Act, 1961 (for short 'the Act'). Since, the issues involved in these appeals are common these were clubbed vide order dated 08.11.2019 passed by the coordinate Bench.

2. Accordingly, these appeals were heard together and are being disposed of by this common and consolidated orders for the sake of convenience.

3. The common ground raised in all these appeals is levy of fees u/s 234E of the Act while processing the TDS statements u/s 200A of the Act.

4. At the outset, the Ld. counsel for the assessee pointed out that that clauses (c) to (f) of section 200A were substituted for clauses (c) to (e) by the Finance Act, 2015 applicable w.e.f. 01.06.2015 and since the present appeals pertain to assessment year 2013-14, the provisions of amended clause are not applicable in these cases. The Ld. counsel further submitted that the sole issue

involved in these appeals is covered in favour of the assessee by the order of the ITAT, Mumbai in the case of *Dayanand Vaidik Vidyalaya vs. ACIT (TDS) – CPU* in which the ITAT has held that the revenue cannot levy fees u/s 234E by exercising the powers u/s 200A of the Act for the period of the assessment year prior to 01.06.2015.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the order passed by the Ld. CIT (A) submitted that the Tribunal has decided the said issue by relying on the decision of the ITAT, Amritsar in the case of *M/s GNA Udyog Ltd. vs. ACIT*, decision of the Agra Bench of the Tribunal in *Yasoda Grah Nirman Shakti Sanstha Maryadit vs. ITO* and the judgment of the Hon'ble High Court of Karnataka in the case of *Fateh Raj Singhvi vs. Union of India (2016) 289 CTR 602 (Karnataka)*, whereas the Ld. CIT (A) has based his finding on the judgment of the Hon'ble Gujarat High Court in the case of *Rajesh Kourani vs. Union of India 83 Taxmann.com 137*. The Ld. DR further pointed out that the Hon'ble Gujarat High Court has passed the said judgment after considering the judgment of the Hon'ble Karnataka High Court in the case of *Fateh Raj Singhvi vs. Union of India*.(supra). The Ld. further submitted that the Hon'ble Rajasthan High Court in the case of *M/s Dundlod Shikshan Sansthan and another vs. Union of India and others CWP No. 8672/ 2014 dated 28.07.2015*, has also held that even prior to the amendment made by the Finance Act, 2015 applicable w.e.f. 01.06.2015 in section 200A, the imposition of late filing fee was valid. Relying on the judgment of the Hon'ble Gujarat High Court (supra), the Ld. DR submitted that there is no infirmity in the orders passed by the Ld. CIT (A) to interfere with the same.

6. We have heard the rival submissions of the parties and also carefully perused the material on record. As pointed out by the Ld. counsel for the assessee, the coordinate Bench of the Tribunal has dealt with the identical issue in the case of *Dayanand Vaidik Vidyalay (supra)* ITA No. 5173/Mum/2017 A.Y. 2015-16 and following the decision of the ITAT, Amritsar Bench in the case of *M/s GNA Udyog Ltd. (supra)* and the decision of

the Hon'ble Karnataka High Court in the case of *Fateh Raj Singhvi vs. Union of India* (supra) held that the levy of fee u/s 234E could not be made in purported exercise of power u/s 200A by the revenue for the period of the assessment year prior to 01.06.2015. The findings of the coordinate Bench are reproduced as under:-

"We shall now advert to the contention of the assessee, that the CIT(A) has erred in upholding the late fee of Rs.21,200/- that was levied by the A.O under Sec.234E of the Act. It is the case of the assessee before us, that as the TDS statement is for the period prior to 01.06.2015, hence no late fee could have been charged for the said period while furnishing the statement under Sec.200A of the Act. We find that the aforesaid issue is squarely covered by the order of the coordinate bench of the ITAT, Amritsar in the case of M/s GNA Udyog Ltd. Vs. ACIT (ITA No.126 to 133/ASR/2017, dated 15.01.2019) for A.Y. 2015-16, wherein it was observed as under:

*"6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, it is a matter of fact borne from the records that the assessee had delayed filing of the statements of tax deduction at source in Forms 26Q/27EQ for all the four quarters relevant to assessment year 2015-16. On a perusal of the records, it stands revealed that all of the statements of tax deduction at source were filed by the assessee on 22.09.2015 and the same had thereafter been processed under Sec.200A of the I.T Act on 26.09.2015 and 04.10.2015, as per the details tabulated hereinabove, We find that the Hon'ble High Court of Karnataka in the case of *Fatheraj Singhvi & Ors. Vs. Union of India* (2016) 289 CTR 602 (Kar.) had concluded that the notice under Sec.200A of the I.T. Act computing fee under Sec.234E, to the extent the same related to the period of the tax deducted prior to 01.06.2015 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 Paints & Coatings Ltd. Vs. DCIT* (2018) 167 DTR 83 (Chd.). In the aforesaid case it was observed by the Tribunal that levy of fee 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 as such 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 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.”

In the aforementioned case, the Tribunal after considering the judgment of the Hon'ble High Court of Karnataka in the case of Fatheraj Singhavi Vs. Union of India (2016) 289 CTR 602 (Karnataka), had concluded, that levy of fees under Sec.234E could not be made in purported exercise of power under

Sec.200A by the revenue, for the period of the assessment year prior to 01.06.2015. Apart there from, we find that a similar view had also been taken by the ITAT, Agra Bench, Agra in the case of M/s Yasoda Grah Nirman Sahkari Sanstha Maryadit Vs. ITO (TPJ) City Centre, Gwalior (ITA No. 467/Agr/2017, dated 23.05.2018). Accordingly, in terms of our aforesaid observations, we are of the considered view that the CIT(A) had erred in upholding the levy of fees under Sec.234E of Rs.21,200/- in the case of the present assessee. The Ground of appeal No. 2 raised by the assessee is allowed.”

7. We further notice that the identical issue came up for adjudication before the third member of the Bench in the case of *Emsons Exim Pvt. Ltd. vs. ITO (TDS) ITA No. 4406 to 4412/Mum/2017 for the AY 2015-16* due to difference of opinion between the members of the Bench. The Hon'ble President referred the issue to third member, who frame the following question for deciding the issue:-

“Whether the fees prescribed u/s 234E of the Act can be levied while processing return u/s 200A of the Act for any assessment year / period prior to 1st June 2015 in the instant cases, when there is no decision of jurisdictional High Court and when there are two divergent views expressed by two non-jurisdictional High Courts?”

8. The issue was decided by the third member of the Bench in favour of the assessee by holding that fees u/s 234E of the Act can only be charged in respect of delay in filing the statement of TDS for the period after 1st June, 2015. Hence, as per the majority view, the appeals were allowed for statistical purposes. It is apparent from the order of the coordinate Bench in *Emsons Exim Pvt. Ltd.* (supra), the third member has decided the issue taking into consideration, the two divergent views expressed by two non-jurisdictional High Courts. Hence, respectfully following the decision of the coordinate Bench in *Dayanand Vaidik Vidayalya* (supra) and the decision in the *Emsons Exim Pvt. Ltd.* (supra), we hold that fee u/s 234E of the Act can only be charged in respect of delay in filing the statement of TDS for the period after 1st June,

2015. Since, the issues involved in all the appeals pertain to the assessment year 2013-14, our findings shall *mutatis mutandis* apply for all the aforesaid appeals. Accordingly, we direct the AO to delete the late fee levied u/s 234E of the Act, in all the cases.

In the result, the captioned appeals for the AY 2013-14 are allowed.

Order pronounced in the open court on 28th November, 2019.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 28/11/2019

Alindra, PS

आदेश 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