

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE
BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos. 2135 to 2138/Bang/2019
Assessment Years : 2013 – 14 to 2016 – 17

APPELLANT	RESPONDENT
M/s. Oceanus Estates India Pvt. Ltd., #1090B, 4 th Floor, 18 th Cross, Bengaluru South – 560 102. PAN NO : AAACO 9328 C	Vs. TDS Central Processing Centre, Aaykar Bhavan, Sector – 3, Vaishali, Ghaziabad, U.P – 201 010.

Appellant by	:	Shri. S. V. Ravishankar, Advocate
Respondent by	:	Shri. Manjeet Singh, Addl. CIT - DR

Date of Hearing	:	09.01.2020
Date of Pronouncement	:	10.01.2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER:

Present appeals have been filed by assessee against consolidated order dated 29/08/19 passed by Ld. CIT(A)-10, Bangalore for assessment years 2013-14 to 2016-17. At the outset, Ld. AR submitted, that these appeals arises out of intimation issued by Ld.AO, levying interest under section 234E of the Act for years under consideration.

Brief facts are as under:

2. Assessee filed TDS quarter statements, in accordance with section 200 of the Act, for years under consideration, beyond due date prescribed under the Act. It has been submitted that TDS-CPC Ghaziabad, generated electronic intimation under section 200A of the Act, levying fee under section 234E, amounting to Rs.1,13,800, Rs.2,25,200/-, Rs.2,25,200/- and Rs.1,62,490/- for assessment years 2013-14, 2014-15, 2015-16 and 2016-17 respectively.

2.1. Subsequently assessee filed rectification petitions on 08/11/18, 09/11/18 for assessment years 2013-14 and 2014-15 to 2016-17 before Ld.AO. These applications were disposed of by CPC-TDS Ghaziabad by retraining amount of late filing fee amounting to Rs.1,13,800, Rs.2,25,200/-, Rs.2,25,200/- and Rs.1,62,490/- for assessment years 2013-14, 2014-15, 2015-16 and 2016-17 respectively.

Against this order assessee preferred appeal before Ld. CIT (A).

2.2. Ld. CIT (A) while deciding the appeals held as under:

“5.8. The appellant should have challenged the levy of late filing fee under section 234E by filing appeal against the order intimation issued by TDS-CPC and not against the intimation issued under section 154.

5.9. To sum up, appellant’s appeal are to be dismissed for the following reasons:

I. The appellant cannot take the benefit of the judgment of Hon’ble Karnataka High Court in case of Fatheraj Singhvi (supra) because the Hon’ble court as clearly mentioned that the judgment will have a prospective effect and cannot be recalled to open the settled issues.

II. The levy of late filing fee under section 234E cannot be challenged under section 154 of the act.

In view of the above facts the appeals filed by the appellant are dismissed and the late filing fee levied by CPC-TDS is upheld.”

Aggrieved by order of Ld.CIT(A), assessee is in appeal before us now.

2.3. Ld.AR submitted, regarding observation of Ld. CIT(A), that section 234E, cannot be challenged under section 154 of the Act, is against the scheme under Income tax Act. Further, it is submitted that in the event appeal has to be preferred before Ld. CIT(A) against original intimation, as under section 200 A of the Act, the delay will be phenomenal. He submitted that assessee in the rectification application had made the necessary payments and that old general intimation stands merged with subsequent intimation passed by CPC-TDS in view of application under section 154.

2.4. On the contrary, Ld. Sr. DR submitted that late filing fee under section 234E has been levied in original intimations and if assessee wished to challenge such levy under section 234E, appeals should lie against original intimation. He thus supported order passed by authorities below.

We have perused submissions advanced by both sides in light of records placed before us.

3. The reason for not able to file TDS quarter statements within the due date has been placed on record in the paper book which was filed before Ld.CIT(A). In the rectification application filed by assessee interest for short payments have been complied with by assessee however, late filing fee under section 234E stands unpaid. Ld. CIT(A) observes that, to challenge late filing fee levied under section 234E, assessee has to prefer appeal against original

intimation. Considering the fact that, in the event, assessee has to file appeal against original intimation, there will be considerable delay. We are of the view that, reason for not able to file TDS quarter statements within time, needs to be appreciated by Ld. CIT(A).

3.1. We are of the opinion that, reason for not filing appeal against original intimation is bona fide, as assessee was under wrong impression that, once application stands rectified, subsequent order stands merged with original intimation. As levy under section 234E of the act is in original intimation assessee should have filed appeal against original intimation. Under such bona fides circumstances, we are of considered opinion that this issue needs to be sent back to Ld. CIT(A) by condoning delay if any in filing appeal against original intimations. Needless to say that, Ld. CIT(A) shall pass detailed order on merits after giving opportunity to assessee of being heard in accordance with law.

Accordingly, grounds raised by assessee stands allowed for statistical purposes.

In the result, appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 10th January, 2020.

Sd/-
(B. R. Baskaran)
Accountant Member
Bangalore,

Dated: 10th January, 2020.

Sd/-
(Beena Pillai)
Judicial Member

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.