



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA no.7057/Mum./2018
(Assessment Year :2013-14)

ITA no.7059/Mum./2018
(Assessment Year :2013-14)

ITA no.7061/Mum./2018
(Assessment Year :2013-14)

ITA no.7063/Mum./2018
(Assessment Year :2014-15)

ITA no.7065/Mum./2018
(Assessment Year :2014-15)

ITA no.7067/Mum./2018
(Assessment Year :2014-15)

ITA no.7069/Mum./2018
(Assessment Year :2014-15)

ITA no.7071/Mum./2018
(Assessment Year : 2015-16)

ITA no.7073/Mum./2018
(Assessment Year : 2015-16)

ITA no.7075/Mum./2018
(Assessment Year : 2015-16)

ITA no.7077/Mum./2018
(Assessment Year : 2015-16)

ITA no.7058/Mum./2018
(Assessment Year :2013-14)

ITA no.7060/Mum./2018
(Assessment Year :2013-14)

ITA no.7062/Mum./2018
(Assessment Year :2013-14)

ITA no.7064/Mum./2018
(Assessment Year :2014-15)

ITA no.7066/Mum./2018
(Assessment Year :2014-15)

ITA no.7068/Mum./2018
(Assessment Year :2014-15)

ITA no.7070/Mum./2018
(Assessment Year :2014-15)

ITA no.7072/Mum./2018
(Assessment Year : 2015-16)

ITA no.7074/Mum./2018
(Assessment Year : 2015-16)

ITA no.7076/Mum./2018
(Assessment Year : 2015-16)

ITA no.7078/Mum./2018
(Assessment Year : 2015-16)

Insta Exhibitions Pvt. Ltd.
 B-602, Pramukh Plaza
 Cardinal Gracious Road
 Chakala, Andheri (East)
 Mumbai 400 099
 PAN – AABCI0085P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
 TDS Circle, Ghaziabad

..... Respondent

Assessee by : Shri Prakash Chauhan
 Revenue by : Shri Kumar Padmapani Bora

Date of Hearing – 19.12.2019

Date of Order – 15.01.2020

ORDER

PER BENCH

This is a bunch of twenty-three appeals relating to the same assessee and arising out of a common order, dated 17th September 2018, passed by the learned Commissioner of Income Tax (Appeals)-59, Mumbai, sustaining the levy of fee under section 234E of the Income Tax Act, 1961 (for short "*the Act*") for different quarters relating to the assessment years 2013-14, 2014-15 and 2015-16.

2. Brief facts are, for the different quarters of financial years relevant to the assessment years 2013-14, 2014-15 and 2015-16, the assessee filed its TDS in terms of section 200(3) of the Act. However, the aforesaid TDS statements were not filed within the due date prescribed in the statute. Therefore, while processing the TDS

statements under section 200A of the Act, fees under section 234E of the Act were levied at the prescribed rate. Contesting the levy of fee under section 234E of the Act, the assessee moved applications for rectification under section 154 of the Act before the concerned authority. However, in orders passed under section 154 of the Act, the applications were rejected. Against the orders passed under section 154 of the Act, the assessee filed appeals before the first appellate authority. Of course, in respect of some of the quarters, the assessee challenged the orders passed under section 200A of the Act directly before learned Commissioner (Appeals). While considering assessee's appeals, learned Commissioner (Appeals) found that all these appeals were filed belatedly with considerable delay. On a perusal of the applications filed by the assessee seeking condonation of delay, learned Commissioner (Appeals) did not find the reasons explaining delay convincing. Therefore, assessee filed further application explaining reason of delay and seeking condonation thereof. However, learned Commissioner (Appeals) was still not satisfied with the fresh reasoning of the assessee and ultimately dismissed the appeals in limine on the ground of delay without deciding them on merit. Aggrieved, the assessee is in appeal before the Tribunal.

3. We have considered rival submissions and perused the material on record. Undisputedly, the assessee had filed the appeals contesting

the levy of fee under section 234E of the Act before learned Commissioner (Appeals) belatedly. It is noticed, while explaining the delay in filing the appeal, initially, the assessee had stated that its tax consultant had advised for not filing the appeals, since according to him, fee charged under section 234E of the Act will be automatically deleted in view of a the decision of the Tribunal, Pune Bench. Subsequently, the assessee advanced fresh reasons for condonation of delay by stating that the management was not aware of the TDS demand as it was never brought to its notice. Only after it was made aware of such demands by virtue of a letter dated 13th September 2017, received from the Commissioner of Income Tax (TDS), the assessee took immediate steps for filing the appeals, though, belatedly. It is the contention of the assessee that the delay in filing of the appeals was due to bonafide reasons and not due to any deliberate negligence or lapse on the part of the assessee.

4. Per contra, the learned Departmental Representative has opposed the condonation of delay by submitting that such inordinate delay cannot be condoned in the absence of valid reasons.

5. Having considered rival submissions, we find that the dispute in the present appeal is confined to levy of fee under section 234E of the Act while processing the TDS statements/returns under section 200A of the Act. On a perusal of section 200A of the Act, it is evident that

prior to 1st June 2015 the aforesaid provision did not postulate levy of fee under section 234E of the Act. Only by virtue of amendment made by the Finance Act, 2015, by introducing sub-clause (c) to section 200A(1) of the Act, the authority concerned was empowered to levy fee under section 234E of the Act while processing the TDS statement. Therefore, assessee's contention that for any period prior to 1st June 2015, the authority concerned is not authorized to levy fee under section 234E of the Act while processing TDS statements under section 200A of the Act has substantial merit, hence, requires consideration. In fact, there are a number of judicial precedents, including, the decision of the Hon'ble Karnataka High Court in Shri Fatehraj Singhvi v/s Union of India, 73 taxmann.com 252 (Kar.), wherein, it has been held that the authority concerned while processing the TDS statement under section 200A of the Act has no power to levy fee under section 234E of the Act for any period prior to 1st June 2015. Of course, the Hon'ble Gujarat High Court in Rajesh Kourani v/s Union of India, [2017] 83 taxmann.com 137, has expressed a contrary view. Be that as it may, the issue relating to levy of fee under section 234E of the Act requires deliberation on merit keeping in view the judicial precedents on the issue. No doubt, the assessee has filed the appeals belatedly. However, it cannot be said that by filing the appeals belatedly, the assessee was going to derive any undue advantage. Rather, the assessee was putting itself in a position of risk, since, non-

filing of appeals contesting the levy of fee under section 234E of the Act would result in excess tax burden on the assessee, more so when the assessee, prima facie, appears to have a good case on merits. Keeping in view the aforesaid facts and the submissions made by the assessee explaining reasons for delay in filing the appeals, we are of the view that the delay in filing the appeal before the learned Commissioner (Appeals) was due to bonafide reasons, therefore, learned Commissioner (Appeals) should have condoned the delay and decided the appeals on merits. In view of the aforesaid, we set aside the impugned order passed by the learned Commissioner (Appeals) and restore the issue relating to levy of fee u/s 234E to his file for adjudication on merits. Needless to mention, assessee must be provided a reasonable opportunity of being heard before deciding the appeals.

6. In the result, all the appeals are allowed for statistical purposes.
Order pronounced in the open Court on 15.01.2020

Sd/-
S. RIFAUH RAHMAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 15.01.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai