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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**
**AND**
**BEFORE SHRI A.N. MISSHRA, ACCOUNTANT MEMBER**

I.T.A. Nos. 6257,6258,6259/Del/2018
Assessment Years: 2013-14 to 2015-16

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| Yamuna Khadar Shiksha Samiti,<br>C/o Kapil Goel Adv., F-26/124<br>Sector 7, Rohini, Delhi<br>(PAN:AAAAY5044M) | vs. | INCOME TAX OFFICER,<br>(TDS), MUZAFFARNAGAR |
| **(ASSESSEE)** | | **(RESPONDENT)** |

**Assessee by**: Sh. Gautam Acharya, C.A.
**Revenue by**: Sh. Saras Kumar, Sr. DR.

**ORDER**

**PER H.S. SIDHU, JM**

These 03 appeals filed by the assessee against the common order of the Ld. Commissioner of Income Tax (Appeals) dated 26.08.2018 for the assessment years 2013-14 to 2015-2016. Since the issue involved in all the appeals are common, therefore, these appeals were heard together and are being decided by this consolidated order. The grounds raised by the assessee in the assessment years 2013-14 to 2015-16 are reproduced as under:

***ITA No. 6257/Del/2018 (A.Y. 2013-14)***

*"1. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS) Muzaffarnagar levying invalid and unlawful fees u/s 234E (Rs.*

*262300) which is covered in favour of appellant by various binding judicial precedents clearly holding that prior to amendment by Finance Act 2015 in section 200A (01/06/2015) no fees could be levied and thereby flouting rule of law.*

*2. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS) Muzaffarnagar levying invalid and unlawful fees u/s 234E where order u/s 200A dated 08/01/2018 is apparently time barred and beyond the purview of law."*

***ITA No. 6258/Del/2018 (A.Y. 2014-15)***

*"1. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS) Muzaffarnagar levying invalid and unlawful fees u/s 234E (Rs. 379160) which is covered in favour of appellant by various binding judicial precedents clearly holding that prior to amendment by Finance Act 2015 in section 200A (01/06/2015) no fees could be levied and thereby flouting rule of law.*

*2. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS) Muzaffarnagar levying invalid and unlawful fees u/s 234E where order u/s 200A dated 08/01/2018 is apparently time barred and beyond the purview of law."*

***ITA No. 6259/Del/2018 (A.Y. 2015-16)***

*"1. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS)*

*Muzaffarnagar levying invalid and unlawful fees u/s 234E (Rs. 371360) which is covered in favour of appellant by various binding judicial precedents clearly holding that prior to amendment by Finance Act 2015 in section 200A (01/06/2015) no fees could be levied and thereby flouting rule of law.*

*2. That on the facts and in the circumstances of the case and in law, ld. CIT(A) erred in sustaining the order passed by ITO (TDS) Muzaffarnagar levying invalid and unlawful fees u/s 234E where order u/s 200A dated 08/01/2018 is apparently time barred and beyond the purview of law."*

2. At the time of hearing, learned counsel for the assessee stated that the issue involved in all these four appeals have already been adjudicated and decided in favour of the assessee by the ITAT Delhi Benches vide its order dated 09.11.2017 passed in the case of Samikaran Learning Private Limited vs. TDS Officer, Delhi in ITA Nos. 4050 to 4054/Del/2016 in Assessment Years 2014-15 to 2015-16. He further stated that the issue involved in these appeals have also been adjudicated and decided by various Benches of ITAT. The details of the same he has given in the in the paper book filed by the assessee. He has also filed a copy of order dated 09.11.2017 passed in ITA No. 4050 to 4054/Del/2016 Samikaran Learning Private Limited vs. TDS Officer. He further stated the order dated 09.11.2017 passed by the ITAT Delhi Benches has also been followed in ITA No. 5321 to 5331/Del/2017, Assessment Years 2013-14 to 2015-16 in which the Judicial Member was the party and therefore, he requested that respectfully following the order of ITAT Delhi Benches

(Supra), the aforesaid appeals filed by the assessee may be allowed and the addition in dispute may be deleted.

3. Learned DR relied upon the orders passed by the Revenue authorities and could not produce any contrary order to the orders referred by the learned counsel for the assessee.

4. We have perused the orders passed by the Revenue authorities alongwith orders referred by the learned counsel for the assessee on the issue in dispute. For the sake of convenience, the relevant paras of the order dated 22.05.2018 of ITAT Delhi Benches passed in ITA Nos. 5321 to 5331/Del/2017 assessment years 2013-14 to 2015-16 in the case of M/s Wits Interior Pvt. Ltd., vs. ACIT/DCIT, Ghaziabad in which the Judicial Member was the party in these cases. The relevant paragraph of the finding of the Tribunal vide order dated 22.05.2018 is reproduced as under:-

> *"3.1. I have considered the rival submissions and perused the material available on record, especially the impugned order as well as the order of the ITAT, Delhi in the case of Samikaran Learning Private Limited vs. TDS Officer, Delhi ITA Nos. 4050 to 4054/Del/2016 (Ayrs. 2014-15 & 2015-16) decided on 09.11.2017 wherein decision of the ITAT, Pune Bench has been discussed in detail in the case of Gajanan Constructions vs DCIT, CPC (TDS), (2016) 73 taxman.com 380 (Pune Trib.). For the sake of convenience, I am reproducing the relevant findings of the ITAT, Delhi in the case of Samikaran Learning Private Limited vs. TDS Officer, Delhi (Supra) as under:-*
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> > *"8. Shri Sanket Joshi, learned Counsel pointed out that the issue which arises in the present appeal is two-fold whether the appeal filed by the assessee is maintainable and whether any fees could be levied under section 234E of the Act prior to 01.06.2015, while issuing intimation under section 200A of the Act. Our attention was drawn to the provisions of section 200(3) of the Act, wherein*

*the duty of person was to file the statement within prescribed time. Reference was made to Rule 31A of the Income Tax Rules, 1962 (in short 'Rules'), which provides the time limit to file the statement of tax deducted at source. He further pointed out that the Act requires quarterly statement to be filed within 15 days of close of the quarter. Thereafter, the learned Authorized Representative for the assessee pointed out that clause (c) to section 200A(1) of the Act was inserted w.e.f. 01.06.2015, under which levy of fees was provided for late filing the quarterly statements of TDS. He further stated that earlier to that, there was no provision of levy of fees. Similarly, amendments were made in section 246A of the Act. The first issue raised by the learned Authorized Representative for the assessee was that where the Assessing Officer had issued the intimation under section 200A of the Act, then the same is appealable under which fees had been charged under section 234E of the Act. An application for condoning the delay in filing the appeals was also filed as referred to by the learned Authorized Representative. Referring to the order passed by the CIT(A), the learned Authorized Representative for the assessee pointed out that the order of Assessing Officer was not passed under section 234E of the Act but was passed under section 200A of the Act. The CIT(A) had relied on the ratio laid down by the Hon'ble Bombay High Court in Rashmikant Kundalia's case (supra), which settled the constitutional validity of section 234E of the Act. The arguments before the Hon'ble Bombay High Court were that there was no right to insert the said section. However, no arguments were advanced in respect of applicability of said section for the period prior to 01.06.2015. He further pointed out that firstly, there has to be mechanism to charge fees under section 234E of the Act and prior to insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015, there was no mechanism to charge fees by the Assessing Officer. He stressed that where an order has to be passed under section 200A of the Act for charging fees under section 234E of the Act, then the Legislature should provide the machinery for charging the said fees under section 234E of the Act, which was provided w.e.f. 01.06.2015. He further stressed that where the assessee had*

*denied his liability to be assessed, then the right to appeal is provided under section 246A(1)(a) of the Act and where the assessee says that he denies his liability, then the same has to be interpreted liberally. Referring to the decision of Hon'ble Bombay High Court in Rashmikant Kundalia's case (supra), relied upon by the CIT(A), the learned Authorized Representative for the assessee pointed out that it only settled the constitutional validity of section 234E of the Act and hence, the said ratio had to be applied accordingly and it cannot be said that charging of late fees under section 234E of the Act by the Assessing Officer while issuing intimation under section 200A of the Act can be charged prior to 01.06.2015. The learned Authorized Representative for the assessee further pointed out that the issue of charging of fees under section 234E of the Act and raising of demand under section 200A of the Act has been adjudicated by series of cases by different Tribunals and copies of same were filed.*

*9. Further, it was pointed out that the CIT(A) has wrongly applied the ratio laid down by the Hon'ble High Court of Karnataka in Lakshmi Nirman, Bangalore (P.) Ltd.v. Dy. CIT [2015] 60 taxmann.com 144/234 Taxman 275. He stated that it was not the case of assessee that fees was illegal but since there was no mechanism provided to levy the fees under section 200A of the Act, which was later provided w.e.f. 01.06.2015 as per the amendment, then prior to that date, no fees could be charged from the assessee. Second aspect of the same was that the Assessing Officer had no authority to levy the fees prior to 01.06.2015. He referred to the ratio laid down by the Hon'ble Supreme Court in CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294/5 Taxman 1, which had laid down the proposition that in cases where the cost of acquisition of the assets were Nil, then no capital gains has to be computed in the hands of assessee since there was no mechanism to charge capital gains. He further stressed that the Hon'ble Rajasthan High Court in Dundlod Shikshan Sansthan v. Union of India [2015] 235 Taxman 446/63 taxmann.com 243, judgment dated 28.07.2015 had adjudicated the issue relating to whether the fees charged is legal or illegal and had not touched upon the*

*mechanism to levy the fees. In this regard, the learned Authorized Representative for the assessee referred to the ratio laid down by the Hon'ble Bombay High Court in CIT v. Thana Electricity Supply Ltd. [1994] 206 ITR 727, wherein while explaining the principle of obiter dicta it was pointed out that casual representation in order would not decide the order in one way or the other. The learned Authorized Representative for the assessee pointed out that the provisions of section 200A of the Act were inserted earlier. However, section 234E of the Act was inserted later and where section 200A of the Act does not provide for levy of fees by the Assessing Officer till before the amendment w.e.f. 01.06.2015, there was no merit in charging the said levy. He further pointed out that after the amendment w.e.f. 01.06.2015, the Assessing Officer had power to make adjustments in intimation passed under section 200A of the Act itself.*

*10.The ld. Counsel for the assessee fu ther pointed out that insertion made w.e.f. 01.06.2015 was prospective in nature and hence, had to be applied from 01.06.2015 itself. He relied on the Memo explaining Finance Bill, 2015 while introducing clause (c) to section 200A(1) of the Act. He further supported the arguments of earlier Counsel that prior to 01.06.2015, where there was no power given under section 200A of the Act to the Assessing Officer to charge the said fees, the present bunch of appeals being filed by different assesse related to the period prior to 01.06.2015 and hence, no fees could be charged under section 234E of the Act. He further pointed out that in CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 (SC), the Hon'ble Supreme Court held that any amendment can be considered retrospective in order to remove the hardship of assessee but not of the Department. The ld. Counsel for the assessee referred to the amendment brought in by the Finance Act and further placed reliance on the ratio laid down by Chennai Bench of Tribunal in G. Indirani v. Dy. CIT [2015] 43 CCH 511 and Ahmedabad Bench of Tribunal in Dhanlaxmi Developers v. Dy. CIT [2016] 46 CCH 1 .*

*11.The learned DR pointed out that the issue arising in the present set of appeals is whether*

*the payment of late fees under section 234E of the Act can be charged under section 200A of the Act, wherein clause (c) was inserted w.e.f. 01.06.2015. He further referred to the Chapter XVIIB of the Act, which provide deduction of tax at source, wherein payer of sum be it is salary, interest or commission, etc. has certain obligations and they have been made responsible, wherein the payments are made or credited to the account of payee, then the duty of the deductor is to deduct tax. Sections 192 to 194LD, 195 to 196D of the Act were various provisions for deducting tax at source. Section 199 of the Act provides credit of tax deducted at source and section 200 of the Act lays down the duties of person responsible to deduct the tax. He further stressed that it was mandatory that after deduction, the deductor shall pay the tax in the account of Treasury, there was no discretion with the deductor vis-à-vis rate of deduction, at what time and when to be paid. The learned CIT-DR further stated that TDS was one of the modes of recovery which works on the principle of paying as you earn. He further stated that TDS is source of revenue to the Government to carry out various programmes. Once the tax was deducted, then it was not the deductor's money but it was deducted on account of third party, who claims it as part of his tax payment. The obligation on the deductor was to collect the said tax deducted at source and deposit the same and the deductee had all the rights to claim the benefit of such tax deducted by the deductor. Earlier, under the Act, the onus was upon the deductor to issue certificate for claiming TDS payments. However, since there were various frauds, because of certificate issued by the deductors, the provisions of sub-section 200(3) of the Act were inserted w.e.f. 01.04.2005. He further explained that any person referred to in section 192(1A) of the Act shall "implies that it was obligatory and mandatory that statement of tax deducted had to be filed within prescribed time limit". He referred to the proviso to section 200(3) of the Act, which was inserted w.e.f. 01.10.2014, wherein it is provided that correction statement for rectification can also be issued.*

*12.The learned DR further pointed out that before insertion of levy of fees under section 234E of the Act, there was provision of levy of penalty under*

*section 272A(2)(k) of the Ac This amendment was w.e.f. 01.04.2005, hence where the statement was not filed by the deductor, penal provisions were attracted and the same was with respect to quarterly returns to be filed. The learned DR further pointed out that the provisions of section 200(3) of the Act and penalty under section 272A(2)(k) of the Act were simultaneously introduced. He further referred to the provisions of section 200A of the Act which were introduced w.e.f. 01.04.2010 by the Finance (No.2) Act, 2009 for furnishing of TDS returns. Further, reference was made to sub-clauses under section 200A(1) of the Act, wherein clause (a) refers to the sum deducted and clause (b) refers to the interest, if any; and w.e.f. 01.07.2012, new section was introduced i.e.234E of the Act, under which it was provided that person shall be liable to deposit the tax deducted at source, hence the provisions were mandatory i.e. the liability was on the deductor to furnish the statement and in case of any default in furnishing statement, fees was provided under the said section. He further referred to the second proviso, which was inserted w.e.f. 01.07.2012, wherein it is provided that under clause (k) to section 272A(1) of the Act, no penalty is to be levied. He stressed that after such an amendment, the provisions of section 234E of the Act were compulsorily applicable. The learned DR further pointed out that penalty for non-furnishing of statement under section 200(3) of the Act is provided under section 271H of the Act, where the word used is 'may'. However, under section 234E of the Act, for levy of fees, the word used is 'shall' and it is further provided that the amount of fees, shall not exceed the tax deducted at source. Referring to sub-section (3), it was pointed out that the amount of fees is to be deposited before delivering the statement. He stressed that the provisions of section 234E of the Act was charging section wherein the liability was upon the assessee that he shall pay and when the same is to be paid is also specified therein. The Legislature in this regard was clear that defaulter itself would make the compliance. Hence, the question is if as per section 234E(1) of the Act, the assessee is liable to pay late fees and as per sub-section (3), late fees has to be paid before filing the statement and where the provisions of both sub-section (1) and (3) to section 234E of the Act are mandatory,*

*since the word used is, shall, then it is obligatory upon the person to pay the said fees.*

*13.Referring to the decision of Hon'ble Bombay High Court in Rashmikant Kundalia's case (supra) wherein the constitutional validity was challenged, the learned DR referred to paras 13 to 15 and 18 of the said judgment and pointed out that the right to appeal was the creation of statute and the Hon'ble High Court was dealing with constitutional validity but also considered the purpose for which the said section was introduced. Referring to section 200A(1)(c) of the Act, he stated that though the word used is fees, if any, but that means where there is an error or where no fees has been paid, then although the amendment was w.e.f. 01.06.2015, but the amendment was procedural in nature. He stressed that once charging section is there, where the assessee has been asked to pay the fees, then only thing is that the provisions of section 200A of the Act were added in 2010, provisions of section 234E of the Act were added in 2012, then if by error, it was not there, then by way of insertion of clause (c) to section 200A(1) of the Act, the Assessing Officer is empowered to charge. He further relied on Chennai Bench of Tribunal, wherein it is provided that the Assessing Officer can charge fees under section 234E of the Act. He further contended that by way of an amendment in 2015, he Act has not provided any new levy; the provisions of section 234E of the Act were already there and amendment is only clarificatory. Section 234E of the Act was charging section w.e.f. 01.04.2012 and in case of violation of provisions of the Act, fees was to be levied. Referring to the reliance placed upon by the learned Authorized Representative for the assessee on Vatika Township (P.) Ltd's.case (supra), he pointed out that the issue before the Hon'ble Supreme Court was charging of surcharge which was new levy and it was held to be prospective. He further stated that if there is an obligation by way of new statute, then such amendment is prospective. It was further pointed out by him that before the Hon'ble Delhi High Court in CIT v. Naresh Kumar [2013] 39 taxmann.com 182/[2014] 221 Taxman 59/362 ITR 256 the amendment by way of Finance Act, 2010 in section 40(a)(ia) of the Act was the issue, which was held to be charificatory*

*and hence retrospective in nature. He further placed reliance on the ratio laid*
*down by the Hon'ble Supreme Court in Govinddas v. ITO [1976] 103 ITR 123.*

*14. The learned Authorized Representative for the assessee in rejoinder pointed out that Memo explaining the Finance Bill clearly says that the amendment was w.e.f. 01.06.2015 and it was proposed to amend the provisions of section 200A of the Act. He further stated that under the provisions of section 45 of the Act, where the cost of acquisition was Nil, no capital gains was leviable but after the amendment, it is so provided that capital gains would be chargeable in some cases where the cost of acquisition was Niland hence, it is the statute which empowers the authorities to levy fees, charges or taxes. In the absence of such power, there is no merit in levy of fees under section 234E of the Act.*

*15. We have heard the rival contentions and perused the record. The issue arising in this bunch of appeals is against levy of fees under section 234E of the Act. In order to adjudicate the issue, first reference is being made to the relevant provisions of the Act. Under Chapter XVII headed collection and 'recovery of taxes' and under 'clause B', deduction at source, the statute lays down the duty of the payer of certain amounts to deduct tax at source under sections 192 to 194LD, 195 to 196D of the Act. Under section 198 of the Act, it is provided that the tax deducted at source shall for the purpose of computing the income of assessee be deemed to be income received. Under section 199 of the Act, it is further provided that any deduction made in accordance with the provisions of Chapter and paid to the Central Government shall be treated as payment of tax on behalf of the person from whose income the deduction was made. The sum referred to in sub-section (1A) of section 192 of the Act and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made.*

*16. Section 200 of the Act lays down the duty of the person deducting tax, which reads as under:—*

*"200. (1) Any person deducting any sum in accordance with the foregoing provisions of this Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.*

*(2) Any person being an employer, referred to in sub-section (1A) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.*

*(2A) In case of an office of the Government, where the sum deducted in accordance with the foregoing provisions of this Chapter or tax referred to in sub-section (1A) of section 192 has been paid to the credit of the Central Government without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer or any other person, by whatever name called, who is responsible for crediting such sum or tax to the credit of the Central Government, shall deliver or cause to be delivered to the prescribed income-tax authority, or to the person authorised by such authority, a statement in such form, verified in such manner, setting forth such particulars and within such time as may be prescribed.*

*(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:*

*Provided that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority."*

*17. Under section 200(1) of the Act, it is provided that any person deducting any sum in accordance with the provisions of the Chapter shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs. Under section 200(2) of the Act, any person being an employer, as referred to in sub-section (1A) of section 192 of the Act shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs. Under sub-section (2A) of the Act, it is provided that where the sum has been deducted in accordance with foregoing provisions of the Chapter, by the office of the Government, then duty is upon the Treasury Officer or the Drawing & Disbursing Officer or any other person, to deliver or cause to be delivered to the prescribed income tax authorities, or to the person authorized by such authority, statement in such form, verified in such manner, setting forth such particulars within such time as may be prescribed. Under section 200(3) of the Act, similar responsibility is on any person deducting any sum on or after first day of April, 2005 in accordance with foregoing provisions of the Chapter, including any person as an employer referred to in section 192(1A) of the Act. The onus is upon such person that he shall after paying the tax to the credit of Central Government within prescribed time, prepare such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed income tax authority or any person so authorized, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be provided. The duty is upon a person deducting any sum in accordance with various provisions under the Chapter and also upon an employer who is making deduction out of the payments made to the employees, then sub-section (3) requires that the deductor is to prepare a statement for such period as may be prescribed, which is to be delivered to the prescribed authority, in such form and verified and setting forth such particulars as may be prescribed. The said statement is to be delivered within such time as may be prescribed.*

*18. Rule 31A of the Income Tax Rules, 1962 (in short 'the Rules') provides that every person who*

*is responsible for deduction of tax under Chapter XVIIB shall in accordance with the provisions of section 200(3) of the Act, deliver or cause to be delivered, the quarterly statements to the Director General of Income Tax (Systems) or the persons authorized by them i.e. in respect of deductions under various provisions of the Chapter XVIIB. The Rule further provides that the statements referred to in sub-rule (1) are to be delivered quarterly and the stipulated period of due date of filing the said statement in respect of deductor being an office of the Government and the deductor being other than Government, are provided. The sub-rule (3) of Rule 31A of the Rules further provides that the statement referred to in sub-rule (1) may be furnished in any of the following manners i.e.by way of furnishing the statement in paper form or furnishing the statement electronically under digital signature or after verification. Initially, such statement had to be furnished in paper form and later by way of amendment, the procedure for furnishing the statement electronically was provided. Once the statement has been so submitted by the deductor of tax deducted at source, then processing of statement is as per the provisions of section 200A of the Act. The said section was inserted by the Finance (No.2) Act, 2009 w.e.f. 01.04.2010. The said section 200A of the Act reads as under:—*

*"200A. (1) Where a statement of tax deduction at source or*
*a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

*(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—*

*(i) any arithmetical error in the statement; or*

*(ii) an incorrect claim, apparent from any information in the statement;*

*(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;*

*(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and*

*section 201, and any amount paid otherwise by way of tax or interest;*

*(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and*

*(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor :*

*Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

*Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—*
*i) of an item, which is inconsistent with another entry of the same or some other item in such statement;*
*(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.*
*(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."*

*19. Section 200A of the Act lays down the manner in which the statements of tax deducted at source are to be processed for issuing the intimation. First of all, the sums deductible under the Chapter are to be computed and interest, if any, shall be computed on the basis of such sums deductible as computed in the statements as per clause (a) and (b) under section 200A(1) of the Act. Clauses (c) to (f) reproduced above were substituted for clauses (c) to (e) by the Finance Act, 2015 w.e.f. 01.06.2015. Prior to the substitution, clauses (c) to (e) read as under:—*

*"(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and*

*section 201, and any amount paid otherwise by way of tax or interest;*

*(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and (e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor."*

*20.As per newly substituted clause (c) w.e.f. 01.06.2015, the fees, if any, is to be computed in accordance with the provisions of section 234E of the Act. However, under the earlier clause (c), there was no such provision.*

*21. Section 234E(1) of the Act provides that where a person fails to deliver or cause to be delivered, a statement within time prescribed in section 200(3) of the Act or the proviso to section 206C(3) of the Act, he shall be liable to pay, by way of fees, sum of Rs.200/- for every day during which the failure continues. The said provisions were inserted by the Finance Act, 2012 w.e.f. 01.07.2012. Under sub-section (2), it is further provided that the amount of fees referred to in sub-section (1) shall not exceed the amount of tax deductible or collectable, as the case may be. Sub-section (3) further lays down that the amount of fees referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section 200(3) of the Act or the proviso to section 206C(3) of the Act. The provisions of said section have been made applicable to a statement to be delivered or cause to be delivered on or after the first day of July, 2012.*

*Reading the abovesaid provisions of the Act, it transpires that where tax has been deducted at source by a deductor out of the account of deductee, then the onus is upon the deductor under section 200 of the Act to prepare a statement in such form and verified in such manner which is prescribed under the Act in which the particulars of tax deduction at source are to be provided and the said statement is to be delivered or cause to be delivered within such time as may be prescribed. Rule 31A of the Rules*

*provided the time limit for the furnishing of statement for tax deduction at source on quarterly basis. Section 234E of the Act levies fees for default in furnishing the statements of tax deducted at source. Such fees is to be paid before delivering or causing to be delivered a statement in accordance with section200(3) of the Act or proviso to section 206C(3) of the Act. In other words, in case the assessee has defaulted in not delivering the statement or causing to deliver the statement within time prescribed, then he is liable to pay the fees which is so prescribed under the Act and such fees shall not exceed the amount of tax deductible or collectable at source but the same has to be paid along with statement which is to be delivered under the provisions of section 200(3) of the Act. Though the statement of tax deducted at source has to be furnished by the deductor, no doubt, under section 200 of the Act, but the same has to be processed by the prescribed authority as per pro visions of section 200A of the Act. In case there is any variation in the tax, sum deductible under the Chapter and/or their payment, the Assessing Officer is empowered to make adjustments in this regard and also reject incorrect claim made by the deductor which is apparent from the information in the statement filed by the deductor. Further, the Income-tax authority is authorized to charge interest, if any, and the same shall be computed on the basis of sums deductible in addition to the amount of tax deducted at source, which is to be paid to the account of Treasury by the deductor. In case of any default, interest is to be charged against such deductor and the same is to be computed as per provisions of section 200A(1)(b) of the Act. Further, in addition to both these amounts, clause (c) to section 200A of the Act provides fees to be levied which shall be computed in accordance with the provisions of section 234E of the Act. The said provision to charge fees by the prescribed authority has been substituted for earlier provisions by the Finance Act, 2015 w.e.f. 01.06.2015. Prior to the said substitution though the provisions of section 234E of the Act for payment of fees for default in furnishing the statement were inserted by the Finance Act, 2012 w.e.f. 01.07.2012, the prescribed authority did not have the power to charge the said fees, while processing the*

*quarterly statements/returns under section 200A of the Act.*

*23. Now, looking at various provisions of the Act, the issue needs to be adjudicated in the case of assessee, wherein admittedly, TDS returns which were deemed to be filed by the assessee were filed after delay and the question was whether the Assessing Officer which processing the intimation under section 200A of the Act could charge late fee under the provisions of section 234E of the Act. The assessee claims that the Assessing Officer at best could charge the difference in tax deducted and not paid in Treasury from the deductor and/or any interest payable on such deduction of tax at source. However, till substitution of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015, the Assessing Officer was not empowered to charge fees under section 234E of the Act. The case of Revenue on the other hand, was that it was the duty of deductor while furnishing the statement under section 200(3) of the Act to deposit the fees referred to in section 234E(1) of the Act. The learned DR stressed that fees referred to in sub-section (1) had to be paid while delivering or causing to deliver the statement in accordance with provisions of section 200(3) of the Act or the proviso to section 206C(3) of the Act. However, various regulations and the statutory provisions in this regard point out that undoubtedly, the responsibility of the deductor was to deposit the tax deducted at source in time and if not so, then with interest and consequently, where the tax was not paid in time and interest was not paid in time and then, where the statement of tax deducted at source could not be filed before the prescribed authority within stipulated time, the assessee was liable to levy of fees under section 234E of the Act. However, in case any default occurs due to the non-payment of fees by the assessee in this regard, then the provisions which has to be considered is section 200A(1)(c) of the Act. The power to charge/collect fees as per provisions of section 234E of the Act was vested with the prescribed authority under the Act only on substitution of earlier clause (c) to section 200A of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. Once any provision of the Act has been made applicable from a respective date,*

*then the requirement of the statute is to apply the said provisions from the said date.*

*24. In respect of the issue raised before us, it is clear that the prescribed authority has been vested with the power to charge fees under section 234E of the Act only with regard to levy of fees by the substitution made by Finance (No. 2) Act, 2015 w.e.f. 01.06.2015. Once the power has been given, under which any levy has to be imposed upon taxpayer, then such power comes into effect from the date of substitution and cannot be applied retrospectively. The said exercise of power has been provided by the statute to be from 01.06.2015 and hence, is to be applied prospectively. There is no merit in the claim of Revenue that even without insertion of clause (c) under section 200A(1) of the Act, it was incumbent upon the assessee to pay fees, in case there is default in furnishing the statement of tax deducted at source. Admittedly, the onus was upon the assessee to prepare statements and deliver the same within prescribed time before the prescribed authority, but the power to collect the fees by the prescribed authority vested in such authority only by way of substitution of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. Prior to said substitution the Assessing Officer had no authority to charge the fees under section 234E of the Act while issuing intimation under section 200A of the Act. Before exercising the authority of charging any sum from any deductor or the assessee, the prescribed authority should have necessary power vested in it and before vesting of such power, no order can be passed by the prescribed authority in charging of such fees under section 234E of the Act, while exercising jurisdiction under section 200A of the Act. Thus, in the absence of enabling provisions, under which the prescribed authority is empowered to charge the fees, the Assessing Officer while processing the returns filed by the deductor in respect of tax deducted at source can raise the demand on account of taxes, if any, not deposited and charge interest. However, prior to 01.06.2015, the Assessing Officer does not have the power to charge fees under section 234E of the Act while processing TDS returns. In the absence of enabling provisions, levy of fees could*

*not be effected in the course of intimation issued under section 200A of the Act prior to 01.06.2015.*

*25. The Amritsar Bench of Tribunal in Sibia Health Care (P.) Ltd.v. Dy. CIT [2016] 65 taxmann.com 105 had held that the adjustment in respect of levy of fees under section 234E of the Act was indeed beyond the scope of permissible adjustments contemplated under section 200A of the Act. Such a levy could not be effected in the course of intimation under section 200A of the Act and in the absence of any other provisions enabling the demand in respect of this levy having been pointed out, no such levy could be effected. The said proposition has been applied in various decisions of different Benches of Tribunal. Reference was made to the decisions of Chennai Bench of Tribunal in G. Indirani' case (supra), Ahmedabad Bench of Tribunal in Globe Ecologistics Ltd.v. Dy. CITin ITA Nos.2689-2691/Ahd/2015, ITA No. 2692/Ahd/2015, relating to assessment year 2014-15, ITA No. 2693/Ahd/2015, relating to assessment year 2013-14 and ITA Nos.2694-2695/Ahd/2014, relating to assessment year 2013-14, vide consolidated order dated 26.11.2015 and Chandigarh Bench of Tribunal in Khanna Watches Ltd.v. Dy. CIT in ITA Nos.731 to 735/CHD/2015, relating to assessment years 2013-14 & 2014-15, order dated 29.10.2015.*

*26. While deciding the present bunch of appeals, the Revenue had placed reliance on the ratio laid down by the Hon'ble Bombay High Court in Rashmikant Kundalia' case (supra) wherein, the constitutional validity of section 234E of the Act was challenged. The Hon'ble High Court noted the fact that where the deductor was required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date and the delay in furnishing such TDS returns would have cascading effect. It was further observed by the Hon'ble High Court that under the Income-tax Act, where there is an obligation on the Income-tax Department to process the income-tax returns within specified period from the date of filing, the returns could not be accurately processed of such person on whose behalf tax has been deducted i.e. deductee, until information of such deductions*

*is furnished by the deductor within the prescribed time. Since the substantial number of deductors were not filing their TDS returns/statements within prescribed time frame, then it lead to an additional work burden upon the Department due to the fault of the deductor and in this light and to compensate for additional work burden forced upon the Department, fees was sought to be levied under section 234E of the Act. The Hon'ble High Court held that looking at this from this perspective, section 234E of the Act was not punitive in nature but a fee which was a fixed charge for the extra service which the Department had to provide due to the late filing of TDS statements. It was further held by the Hon'ble High Court that late filing of TDS returns/statements was regularized by payment of fees as set out in section 234E of the Act. Therefore, the findings of Hon'ble High Court were thus, that the fees sought to be levied under section 234E of the Act was not in the guise of tax sought to be levied on the deductor. The provisions of section 234E of the Act were held to be not onerous on the ground that section does not empower the Assessing Officer to condone the delay in late filing the income tax returns or that no appeal is provided from arbitrary order passed under section 234E of the Act. The Hon'ble High Court held that the right to appeal was not a matter of right but was creature of statute and if the Legislature deems fit not to provide remedy of appeal, so be it. The Hon'ble High Court further held that a person can always approach the court in extraordinary equitable jurisdiction under Article 226/227 of the Constitution as the case may be. The Hon'ble High Court therefore, observed that simply because no remedy of appeal was provided for the provisions of section 234E of the Act, the same cannot be said to be onerous and section 234E of the Act was held to be constitutionally valid. The constitutional validity of provisions of section 234E of the Act has also been upheld by the Hon'ble Rajasthan High Court in Dundlod Shikshan Sansthan' case (supra).*

*27. In view of the abovesaid ratio laid down by the Hon'ble Bombay High Court, the case of the learned DR before us was that there is no merit in the present set of appeals filed by the assessee as the Hon'ble High court has laid down*

*that no appeal is provided from an order passed under section 234E of the Act and the same merits to be dismissed at the outset. In this regard, he has raised two issues that (a) the appeal filed by the assessee is not maintainable and also (b) there is no merit in the claim of the assessee that the Assessing Officer is not empowered to charge fees under section 234E of the Act before insertion of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. The learned Authorized Representative for the assessee on the other hand, drew our attention to the Memorandum to the Finance Bill, 2015 while introducing the said clause (c) to section 200A(1) of the Act. The Finance Bill took note of the provisions of Chapter XVIIB, under which the person deducting tax i.e. deductor was required to file quarterly tax deduction at source statement containing the details of deduction of tax made during the quarter by the prescribed due dates. Similar responsibility is on a person required to collect tax of certain specified receipts under section 206C of the Act. In order to provide effective deterrence against the delay in furnishing TDS/TCS statements, the Finance Act, 2012 nserted section 234E of the Act to provide for levy of fees on late furnishing of TDS/TCS statements. The Memo further took note of the fact that the Finance (No. 2) Act, 2009 inserted section200A in the Act, which provided for furnishing of TDS statements for determining the amount payable or refundable to the deductor. It further took note that however, as section 234E of the Act was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. It was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. The Memo explaining the Finance Bill, 2015 very categorically held that currently there does not exist any provision in the Act to enable the processing of TCS returns and hence, a proposal was made to insert a provision in this regard and also the post-provision shall incorporate the mechanism for computation of*

*fees payable under section 234E of the Act. The Finance Bill further refers to the existing provisions of the Act i.e. after processing of TDS statement, intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TDS statement is (i) subject to rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of payment under section 156 of the Act. The Finance Bill further provided that intimation generated after the proposed processing of TCS statement shall be at par with the intimation generated after processing of TDS statement and also provided that failure to pay tax specified in the intimation shall attract levy of interest as per provisions of section 220(2) of the Act. Further, amendments were also made in respect of the scheme of payment of TDS/TCS by the Government, deductor/collector which are not relevant for deciding the issue in the present appeal and hence, the same are not being referred to. The Finance Bill further provided that the amendment would take effect from 01.06.2015.*

*28.The perusal of Memo explaining the provision relating to insertion of clause (c) to section 200A of the Act clarifies the intention of Legislature in inserting the said provision. The provisions of section 234E of the Act were inserted by the Finance Act, 2012, under which the provision was made for levy of fees for late furnishing TDS/TCS statements. Before insertion of section 234E of the Act, the Finance (No. 2) Act, 2009 had inserted section 200A in the Act, under the said section, mechanism was provided for processing of TDS statements for determining the amount payable or refundable to the deductor, under which the provision was also made for charging of interest. However, since the provisions of section 234E of the Act were not on statute when the Finance (No. 2) Act, 2009 was passed, no provision was made for determining the fees payable under section 234E of the Act at the time of processing the TDS statements. So, when section 234E of the Act was introduced, it provided that the per son was responsible for furnishing the TDS returns/statements within stipulated period and in default, fees would be charged on such person. The said section itself*

*provided that fees shall not exceed the amount of tax deducted at source or collected at source. It was further provided that the person responsible for furnishing the statements shall pay the said amount while furnishing the statements under section 200(3) of the Act. However, power enabling the Assessing Officer to charge/levy the fee under section 234E of the Act while processing the TDS returns/statements filed by a person did not exist when section 234E of the Act was inserted by the Finance Act, 2012. The power to charge fees under the provisions of section 234E of the Act while processing the TDS statements, was dwelled upon by the Legislature by way of insertion of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. Accordingly, we hold that where the Assessing Officer has processed the TDS statements filed by the deductor, which admittedly, were filed belatedly but before insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015, then in such cases, the Assessing Officer is not empowered to charge fees under section 234E of the Act while processing the TDS returns filed by the deductor.*

*29. The Hon'ble Bombay High Court in Rashmikant Kundalia'case (supra) has upheld the constitutional validity of said section introduced by the Finance Act, 2015 w.e.f. 01.06.2015 but was not abreast of the applicability of the said section 234E of the Act by the Assessing Officer while processing TDS statement filed by the deductor prior to 01.06.2015. In such scenario, we find no merit in the plea of learned CIT-DR that the Hon'ble Bombay High Court in Rashmikant Kundalia' case (supra) has laid down the proposition that fees under section 234E of the Act is chargeable in the case of present set of appeals, where the Assessing Officer had issued the intimation under section 200A of the Act prior to 01.06.2015.*

*30. Another aspect of the issue is whether the amendment brought in by the Finance Act, 2015 w.e.f. 01.06.2015 by way of insertion of clause (c) to section 200A(1) of the Act is clarificatory or is prospective in nature and is not applicable to the pending assessments. Undoubtedly, the provisions of section 234E of the Act were inserted by the*

*Finance Act, 2012, under which the liability was imposed upon the deductor in such cases where TDS statements/returns were filed belatedly to pay the fees as per said section. However, in cases, where the assessee has failed to deposit the said fees, then in order to enable the Assessing Officer to collect the said fees chargeable under section 234E of the Act, it is incumbent upon the Legislature to provide mechanism for the Assessing Officer to charge and collect such fees. In the absence of enabling provisions, the Assessing Officer while processing the TDS statements, even if the said statements are belated, is not empowered to charge the fees under section 234E of the Act. The amendment was brought in by the Finance Act, 2015 w.e.f. 01.06.2015 and such an amendment where empowerment is given to the Assessing Officer to levy or charge the fees cannot be said to be clarificatory in nature and hence, applicable for pen ding assessments.*

*31. The Hon'ble Supreme Court in Vatika Township (P.) Ltd's. case (supra) has explained the general principle concerning retrospectivity and have held that of the various rules guiding how a legislation has to be interpreted, one established rule is that unless contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. Idea behind the rule is that current law should govern current activities. The Memo explaining the Finance Bill, 2015 very clearly also recognizes that and refers to the current provisions of sub-section (3) to section 200 of the Act, under which the deductor is to furnish TDS statements. However, as section 234E of the Act was inserted after insertion of section 200A in the Act, the existing provisions of section 200A of the Act did not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. In this regard, it was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. In other words, the Assessing Officer is empowered to charge fees payable under section 234E of the Act in the intimation issued after insertion of clause (c) to section*

*200A(1) of the Act w.e.f. 01.06.2015. The Legislature itself recognized that under the existing provisions of section 200A of the Act i.e. prior to 01.06.2015, the Assessing Officer at the time of processing the TDS statements did not have power to charge fees under section 234E of the Act and in order to cover up that, the amendment was made by way of insertion of clause (c) to section 200A of the Act. In such scenario, it cannot be said that insertion made by section 200A(1)(c) of the Act is retrospective in nature, where the Legislature was aware that the fees could be charged under section 234E of the Act as per Finance Act, 2012 and also the provisions of section 200A of the Act were inserted by Finance (No. 2) Act, 2009, under which the machinery was provided for the Assessing Officer to process the TDS statements filed by the assessee. The insertion categorically being made w.e.f. 01.06.2015 lays down that the said amendment is prospective in nature and cannot be applied to*
*processing of TDS returns/statements prior to 01.06.2015.*

*32. We further find that in recent judgment dated 26.08.2016, the Hon'ble Karnataka High Court in Writ Appeal Nos. 2663-2674/2015(T-IT) in Fatheraj Singhvi v. Union of India [2016] 73 taxmann.com 252 has quashed the intimation issued under section 200A of the Act levying the fees for delayed filing the TDS statements under section 234E of the Act. The Hon'ble High Court notes that the Finance Act, 2015 had made amendments to section 200A of the Act enabling the Assessing Officer to make adjustments while levying fees under section 234E of the Act was applicable w.e.f. 01.06.2015 and has held that it has prospective effect. Accordingly, the Hon'ble High Court held that "intimation raising demand prior to 01.06.2015 under section 200A of the Act levying section 234E of the Act late fees is not valid". However, the Hon'ble High Court kept open the issue on constitutional validity of section 234E of the Act. We have already referred to the decision of Hon'ble Bombay High Court in Rashmikant Kundalia v. Union of India's case (supra) in this regard, wherein the constitutional validity of section 234E of the Act has been upheld.*

*33. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements/returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law.*

*34. Before parting we may refer to reliance placed upon by the learned DR on the ratio laid down by Chennai Bench of Tribunal in G. Indirani's case (supra) on another aspect wherein it was held that before 01.06.2015, whether the Assessing Officer had authority to pass a separate order under section 234E of the Act levying fees for delay in filing the TDS statements under section 200(3) of the Act; the Tribunal held 'yes' that the assessing authority had such power and after 01.06.2015, the Assessing Officer was within his limit to levy fees under section 234E of the Act even while processing the TDS statements under section 200A of the Act. In view of the present set of facts, where the Assessing Officer had charged fees under section 234E of the Act while processing the statements under section 200A of the Act before 01.06.2015, there is no merit in the reliance placed upon by the learned DR on the said proposition laid down by the Chennai Bench of Tribunal and we dismiss the same.*

*35. Another reliance placed upon by the learned DR was in respect of amendment being retrospective or prospective and reliance was placed on the ratio laid down by Hon'ble Delhi High Court in Naresh Kumar's case (supra). However, in view of our decision in the paras hereinabove, where power is being enshrined upon the Assessing Officer to levy or charge while processing the TDS returns w.e.f. 01.06.2015, such provision cannot have retrospective effect as*

*it would be detrimental to the case of taxpayer. The Hon'ble Delhi High Court was considering the application of amendment to section 40(a)(ia) of the Act by the Finance Act, 2010, under which certain relaxations were given to the application of said section and it was held that the same applies retrospectively to earlier years. However, in the present set of appeals, the issue is against the provision under which a new enabling power is being given to charge fees under section 234E of the Act while processing TDS returns/statements and such power is to be applied prospectively. In any case, the Parliament itself has recognized its operation to be prospective in nature while introducing clause (c) to section 200A(1) of the Act and hence, cannot be applied retrospectively. Similarly, reliance placed upon by the learned DR on the ratio laid down by the Hon'ble Supreme Court in Govinddas's case (supra) is misplaced because of the distinguishable facts and issues.*

*36. Now, coming to the connected issue raised by the learned Authorized Representative for the assessee by way of ground in some of the appeals appeal No. 1 that whether any appeal is maintainable against the intimation issued under section 200A of the Act and/or order passed under section 154 r.w.s. 200A of the Act by Assessing Officer in charging the fees under section 234E of the Act. Both the learned Authorized Representatives have raised varied arguments in respect of said issue and the learned DR has referred to the order of CIT(A), who had held that no appeal is maintainable against the order of Assessing Officer passed while processing the TDS returns/statements and charging of fees under section 234E of the Act.*

*Without going into various aspects of the issue, we make reference to the Memorandum explaining the Finance Bill, 2015, under which the heading was rationalization of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS). The said memorandum categorically recognized that under the existing provisions of the Act, after processing of TDS statements, an intimation is generated specifying the amount payable or refundable. It was further noted that this intimation generated after processing TDS statement is (i) subject to*

*rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of payment under section 156 of the Act. Under the amendment, similar position was given to the processing of TCS statements. In other words, the Legislature recognizes that a deductor who has filed his statement of tax deducted at source, which in turn, has been processed by the Assessing Officer and intimation is generated under which, if any amount is found to be payable, then such intimation generated after processing of TDS returns is subject to rectification under section 154 of the Act and/or is also appealable under section 246A of the Act, since the demand issued by the Assessing Officer is deemed to be a notice of payment under section 156 of the Act. Since the intimation in question issued by the Assessing Officer was appealable order under section 246A(1)(a) of the Act, therefore, the CIT(A) should have examined the legality of adjustment made under intimation issued under section 200A of the Act. The CIT(A) has rejected the present set of appeals on the surmise that first of all, no appeal is provided against the intimation issued under section 200A of the Act. Further, the CIT(A) has also decided the issue on merits and the assessee is in appeal before us on both these grounds. Vis-à-vis the first issue of maintainability of appeal against the intimation issued under section 200A of the Act, we hold that such intimation issued by the Assessing Officer after processing the TDS returns is appealable. The demand raised by way of charging of fees under section 234E of the Act is under section 156 of the Act and any demand raised under section 156 of the Act is appealable under section 246A(1)(a) and (c) of the Act. Accordingly, we reverse the findings of CIT(A) in this regard. We find support from the similar proposition being laid down by Mumbai Bench of Tribunal in bunch of cases with lead order in Kash Realtors (P.) Ltd.v. ITO in ITA No. 4199/M/2015, relating to assessment year 2013-14, consolidated order dated 27.07.2016, which had also decided the issue of charging of fees under section 234E of the Act in favour of the assessee following the decisions of other Benches of Tribunal. Once intimation issued under section 200A(1) of the Act is appealable order before the CIT(A) under section 246A(1)(a) of the Act, then such*

*appealable order passed by the CIT(A) under section 250 of the Act is further appealable before the Tribunal under section 253 of the Act. Hence, we admit the present appeals filed by the assessee even on this preliminary issue. We have already adjudicated the issue of charging fees under section 234E of the Act by the Assessing Officer while processing returns/statements in the paras hereinabove and in view thereof, we hold that the Assessing Officer is not empowered to charge the fees under section 234E of the Act by way of intimation issued under section 200A of the Act in respect of defaults before 01.06.2015, we allow the claim of assessee on both the aspects. The grounds of appeal raised by the assessee are thus, allowed.*

*37. In the result, all the appeals filed by different assessees for Different quarters relating to different years are allowed."*

*2.3. If the observation made in the assessment order, impugned orders, orders of the Tribunal, material facts available on record along with the arguments from both sides, kept in juxtaposition and analyzed, we find that before us, the assessee has raised a question prior to 01/06/2015, there was no enabling provision in section 200A for raising the demand in respect of levy of fee u/s 234E of the Act. We find that the coordinate Bench of Pune in the case of Gajanan Constructions (supra) has made an elaborate discussion on the issue and decided in favour of the assessee. It is also noted that while coming to a particular conclusion, the Pune Bench of the Tribunal duly considered the decisions relied upon by the Ld. CIT-DR such as from Hon'ble Bombay High Court in Rasmikant Kundalia (in para-6), Hon'ble Karnataka High Court in Laxmi Nirman, Bangalore (P.) Ltd. and also the decision of Hon'ble Rajasthan High Court in Dundlod Shikshan Sansthan vs UOI (supra)(in para-9 of the order), in its order dated 23/09/2016 along with the decision from Hon'ble Apex Court in the case of CIT vs Vatika Township Pvt. Ltd. (2014) 367 ITR 466(SC) to the effect of general principle concerning application of retrospectively of the amendment, wherein, it was held that a legislation is presumed not to be intended to have a retrospective operation. It is also noted that the Bench followed the decision in the case of Fatheraj Singhvi vs UOI(2016) 73 taxman.com 252 (Kerala)(Para-32) and Kash Realtors Pvt. Ltd. vs ITO (ITA NO.4199(Mum.) of 2015) dated*

*27/07/2016(para-36). Even if two views are possible/available, as per the decision from Hon'ble Apex Court in the case of Vegetable Products (88 ITR 192) (SC), the view, which favors the assessee has to be followed. The issue before the Hon'ble Bombay High Court in the case of Rashmikant Kundalia (supra) was with respect to constitution validity of the section introduced by Finance Act, 2015 w.e.f. 01/06/2015 but was not abreast of the applicability of section 234E of the Act by the AO while processing TDS statement. So far as, the Hon'ble Karnataka High Court is concerned, it was held that 'intimation raising demand prior to 01/06/2015, u/s 200A of the Act, levying fee u/s 234E, is not valid'. Considering the aforesaid decision of the coordinate Bench, we hold that amendment in section 200A(1) of the Act is procedural in nature, therefore, the AO while processing the TDS statements, returns in the present set of appeals of the period prior to 01/06/2015, was not empowered to charge fee u/s 234E of the Act, hence, the intimation issued by the Assessing Officer u/s 200A of the Act, in the appeals before us, does not stand, therefore, the demand raised by way of charging fee u/s 234E of the Act is not valid, resultantly, the same is deleted as the intimation issued by the Assessing Officer in the present case, for the period prior to 01/06/2015, is beyond the scope of adjustment provided u/s 200A of the Act. Thus, the appeals of the assessee are allowed.*

*Finally, the appeals of the assessee are allowed.*

*This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 9/11/2017."*

*3.2 After perusing the aforesaid finding of the Tribunal as well as relevant provisions of law on the issue in dispute, I am of the view that as per newly substituted clause © w.e.f. 01.6.2015, the fees, if any, is to be computed in accordance with the provisions of section 234E of the Act. However, under the earlier clause ©, there was no such provision. The amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements/returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. I further find that the coordinate Bench of Pune in the case of Gajanan Constructions (supra) has made an elaborate discussion on the issue and decided in favour of the assessee. It is also noted that while coming to a particular conclusion, the Pune Bench of the*

*Tribunal duly considered the decisions relied upon by the Ld. CIT-DR such as from Hon'ble Bombay High Court in Rasmikant Kundalia (in para-6), Hon'ble Karnataka High Court in Laxmi Nirman, Bangalore (P.) Ltd. and also the decision of Hon'ble Rajasthan High Court in Dundlod Shikshan Sansthan vs UOI (supra)(in para-9 of the order), in its order dated 23/09/2016 along with the decision from Hon'ble Apex Court in the case of CIT vs Vatika Township Pvt. Ltd. (2014) 367 ITR 466(SC) to the effect of general principle concerning application of retrospectively of the amendment, wherein, it was held that a legislation is presumed not to be intended to have a retrospective operation. It is also noted that the Bench followed the decision in the case of Fatheraj Singhvi vs UOI(2016) 73 taxman.com 252 (Kerala)(Para-32) and Kash Realtors Pvt. Ltd. vs ITO (ITA NO.4199(Mum.) of 2015) dated 27/07/2016(para-36). Even if two views are possible/available, as per the decision from Hon'ble Apex Court in the case of Vegetable Products (88 ITR 192) (SC), the view, which favors the assessee has to be followed. The issue before the Hon'ble Bombay High Court in the case of Rashmikant Kundalia (supra) was with respect to constitution validity of the section introduced by Finance Act, 2015 w.e.f. 01/06/2015 but was not abreast of the applicability of section 234E of the Act by the AO while processing TDS statement. So far as, the Hon'ble Karnataka High Court is concerned, it was held that intimation raising demand prior to 01/06/2015, u/s 200A of the Act, levying fee u/s 234E, is not valid'. Respectfully following the aforesaid decision of the Coordinate Bench, I hold that amendment in section 200A(1) of the Act is procedural in nature, therefore, the AO while processing the TDS statements, returns in the present set of appeals of the period prior to 01/06/2015, was not empowered to charge fee u/s 234E of the Act, hence, the intimation issued by the Assessing Officer u/s 200A of the Act, in the appeals before us, does not stand, therefore, the demand raised by way of charging fee u/s 234E of the Act is not valid, resultantly, the same is deleted as the intimation issued by the Assessing Officer in the present case, for the period prior to 01/06/2015, is beyond the scope of adjustment provided u/s 200A of the Act. Thus, the appeals of the assessee are allowed.*

*4. In the result, all the Eleven appeals filed by the Assessee stands allowed.*

*Order pronounced on 22/05/2018."*

5. After going through the aforesaid finding of the Tribunal on the issue in dispute, we are of the view that the issue involved in the present appeals have already been adjudicated and decided in favour of the assessee in the aforesaid cases which has also been followed by various

Benches of ITAT. Hence, respectfully following the aforesaid finding, the addition in dispute is deleted and the appeals filed by the assessee are allowed.

6. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced on 15/01/2020.

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|---|---|
| *Sd/-* | *Sd/-* |
| **[ANADEE NATH MISSHRA]** | **[H.S. SIDHU]** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

Date: 15/01/2020
SH

***Copy forwarded to: -***

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches