

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

**BEFORE SHRI MAHAVIR SINGH, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.5219/Mum/2018  
(Assessment Year : 2016-17)**

M/s. Nisha Aluminium Private Limited 12,D-1, Estee Geejay CHSL Saibaba Nagar, Borivali (W) Mumbai – 400 092	Vs.	ACIT CPC-TDS Mumbai
<b>PAN/GIR No.AABCN0565F</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Kartik Natarajan
Revenue by	Ms. Kavita P Kaushik
<b>Date of Hearing</b>	<b>06/01/2020</b>
<b>Date of Pronouncement</b>	<b>15/01/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.5219/Mum/2018 for A.Y.2016-17 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-60, Mumbai in appeal No.CIT(A)-60/IT-86/ACIT-TDS(CPC)/2016-17 dated 13/07/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.200A of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only effective issue to be decided in this appeal is with regard to the validity of levy of fee u/s.234E of the Act for the first quarter ending June 2015. We find that assessee has raised the following grounds of appeal:-

*1. The Learned CIT(A) has erred in law and in facts in confirming “penalty” in a mechanical fashion under the garb of “fee” of INR 58,647/- for delay in submission of TDS statement levied by the Learned Assessing Officer (Ld. AO) without giving an opportunity of hearing to the assessee in violation of principles of natural justice.*

*2. The Learned CIT(A) has erred in facts and in law in conforming the levy of “fee” even when no services were rendered by the Department for which these “fees” have been charged. In fact, the CIT(A) has confirmed the levy of “penalty” by the Ld. AO in a mechanical fashion by semantic use of “fee” in place of “penalty”.*

2.1. We find that assessee has also raised the following additional ground of appeal:-

*3. Without prejudice to the other grounds of appeal, the Learned CIT(A) erred in law and in facts in confirming the levy of late fee under section 234E of the Act in respect of the TDS duly deducted during the months of April 2015 and May 2015, without appreciating the fact that the clause (c) of sub-section (1) of section 200A came into force with effect from June 1, 2015 only.*

3. We find that the additional ground of appeal goes to the root of the matter and is purely a legal issue and does not involve verification of any facts and accordingly, we deem it fit to admit the same and take up for adjudication. We find that at the time of hearing, the Id. AR fairly stated that the ground No.1 and 2 raised in the original grounds of appeal are not pressed and he would be happy, if adjudication of additional ground is considered on merits. Accordingly, the ground Nos. 1 & 2 of original ground of appeal are dismissed as not pressed.

3.1. We find that assessee is a private limited company engaged in the business of trading in aluminum. In the first quarter of F.Y.2015-16, there was a delay in filing of TDS return. Subsequently, the assessee company

was in receipt of order u/s.200A of the Act levying late fee of Rs.58,647/- u/s.234E of the Act @200/- per day of delay restricted to aggregate amount of tax deductible at source. We find that the assessee had filed correction statement in Form No.26Q on 08/07/2016 for A.Y.2016-17 whereas the original statement was processed on 06/07/2016. Pursuant to this correction statement filed on 08/07/2016, the order was again reprocessed u/s.200A of the Act by the Id. AO as on 08/07/2016. We find the provisions of 200A of the Act was amended w.e.f.01/06/2015 to compute fee payable u/s.234E of the Act at the time of processing of TDS statement u/s.200A of the Act. Hence, for the period April and May 2015, the assessee could not have envisaged an amendment in Section 200A of the Act which came into effect only from 01/06/2015. We find that Clause ( c) in Section 200A(1) of the Act warranting levy of fee u/s.234E of the Act was introduced in the statute only with effect from 01/06/2015. Hence, the said fee u/s.234E of the Act could not be levied on the assessee for the period of delay in respect of transactions pertaining to April and May 2015. However, we hold that the said fee is indeed leviable from 01/06/2015 onwards i.e. in the transactions commencing from June 2015 onwards. We also find that our understanding to this proposition is also endorsed by the co-ordinate bench decision of this Tribunal in the case of Mohd. Naveen Siddhiqui vs. DCIT TDS CPC in ITA No.4959/Mum/2018 for A.Y.2013-14 dated 10/12/2019 wherein it was held that levy of fees u/s.234E of the Act for the period prior to

01/06/2015 would not be sustainable in the eyes of law. The Id. AO is directed accordingly. Accordingly, the additional ground raised by the assessee is allowed.

**4. In the result, appeal of the assessee is partly allowed.**

Order pronounced in the open court on this 15/01/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai