

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A.K.GARODIA, ACCOUNTANT MEMBER

Sl. No.	ITA No.	A.Y.
1.	2175/Bang/2019	2014-15
2.	2176/Bang/2019	2014-15
3.	2177/Bang/2019	2013-14
4.	2178/Bang/2019	2013-14
5.	2179/Bang/2019	2013-14
6.	2180/Bang/2019	2013-14
7.	2181/Bang/2019	2013-14
8.	2182/Bang/2019	2013-14

Vertex Technologies P. Ltd., # 402, 2 nd Floor, Regency Enclave, Magrath Road, Richmond Road, Bangalore – 560 025. PAN: AACCV 2236Q	Vs.	The Deputy Commissioner of Income Tax, CPC-TDS, Ghaziabad. UP.
APPELLANT		RESPONDENT

Appellant by	:	Shri Mukesh R., CA
Respondent by	:	Shri S. Tamil Selvan, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	13.01.2020
Date of Pronouncement	:	22.01.2020

ORDER*Per Bench*

These are a batch of 8 appeals filed by Assessee against a common order dated 8.8.2019 by CIT(Appeals)-10, Bangalore relating to assessment years 2013-14 & 2014-15.

2. The assessee filed statement of tax deducted at source (TDS) for various quarters in Form No.24Q/26Q for FYs 2012-13 & 2013-14 (AYs 2013-14 to 2014-15). The statement was processed by CPC TDS, Bengaluru. There was a delay in filing the above TDS statement and therefore the AO by intimation u/s. 200A of the Income-Tax Act, 1961 [“the Act”] levied late fee u/s. 234E of the Act, in appeals pertaining to filing of Form No.24Q in Q-2, Q-3 & Q-4 and filing of Form No.26Q in Q-4 of AY 2013-14 and filing of Form No.24Q for Q-1 relating to AY 2014-14. In respect of filing of Form No.26Q, Q-1 for AY 2014-15 and Q-2 & Q-3 for AY 2013-14, the levy of late fee u/s.234E was passed u/s.200A read with Sec.154 of the Act. The details of the late fee so levied was as follows:-

FY	Form no.	Q1 (Rs.)	Q2 (Rs.)	Q3 (Rs.)	Q4 (Rs.)	Total (Rs.)
2012-13	24Q		47,800/-	29,400/-	5,400/-	82,600/-
	26Q		2,800/-	5,600/-	1,200/-	9,600/-
2013-14	24Q	17,600/-	-	-	-	17,600/-
	26Q	10,800/-	-	-	-	10,800/-

3. Under Sec.234E of the Act, if there is a delay in filing statement of TDS within the prescribed time then the person responsible for making payment and filing return of TDS is liable to pay by way of fee a sum of Rs.200/- per day during which the failure continues. Section 234E of the Act inserted by the Finance Act, 2012 w.e.f. 1.7.2012. reads as follows:-

“Fee for default in furnishing statements.

234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.”

4. Aggrieved by the aforesaid orders, the assessee filed appeals before the CIT(A). The assessee's contention before CIT(A) was that the provisions of section 234E of the Act was inserted by the Finance Act, 2012 w.e.f. 1.7.2012. Section 200A of the Act is a provision which deals with how a return of TDS filed u/s.200(3) of the Act has to be processed and it reads as follows:-

Processing of statements of tax deducted at source.

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 fee, if any, shall be computed in accordance with the provisions of section 234E;
- (d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;
- (e) 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 (d); and
- (f) the amount of refund due to the deductor in pursuance of the determination under clause (d) 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.”

5. Clause (c) to (f) of section 200A(1) was substituted by the Finance Act, 2015 w.e.f. 1.6.2015. The assessee contended that AO could levy fee u/s.234E of the Act while processing a return of TDS filed u/s.200(3) of the Act only by virtue of the provisions of Sec.200A(1)(c), (d) & (f) of the Act and those provisions came into force only from 1.6.2015 and therefore the authority issuing intimation u/s. 200A of the Act while processing return of TDS filed u/s.200(3) of the Act, could not levy fee u/s. 234E of the Act in respect of statement of TDS filed prior to 1.6.2015. The assessee, thus, challenged the validity of charging of fee u/s. 234E of the Act. The assessee relied on the decision of the Hon'ble High Court of Karnataka in the case of *Fatehraj Singhvi v. UOI [2016] 73 taxmann.com 252* wherein the Hon'ble Karnataka High Court held that amendment made u/s. 200A providing that fee u/s. 234E of the Act could be computed at the time of processing of return and issue of intimation has come into effect only from 1.6.2015 and had only prospective effect and therefore, no computation of fee u/s.234E of the Act for delayed filing of return of TDS while processing a return of TDS u/s.234E of the Act could have been made for tax deducted at source for the assessment years prior to 1.6.2015.

6. The CIT(Appeals) found that the appeals filed by the Assessee were belated and the following was the delay in filing appeal before him:-

FY	Order passed date	Date of filing	No. of days delay
2012-13	08.11.2013	13.03.2019	1921 days
	14.06.2014	13.03.2019	1703 days
	29.08.2016	13.03.2019	895 days
	14.11.2013	13.03.2019	1916 days
	14.11.2013	14.03.2019	1917 days
	21.08.2014	14.03.2019	1636 days
2013-14	10.11.2013	13.03.2019	1919 days
	28.11.2013	13.03.2019	1902 days

7. The Assessee filed application for condonation of delay in filing appeals before CIT(A). The reasons assigned by the Assessee for delay in filing appeal was that there were many opposing judgments on whether late filing fee can be levied u/s.234E or not viz., that of the Amritsar Bench of ITAT in the case of *Sibia Healthcare Private Ltd. Vs. DCIT in ITA No.90/Asr/2015 order dated 9.6.2015* holding that without enabling provision like u/s.200A(1)(c) of the Act, there cannot be levy of late fee u/s.234E of the Act and Chennai ITAT in the case of *M/S.Neelagiris Textiles Vs. DCIT ITA No.795 to 797/Mds/2015 order dated 10.7.2015* taking a contrary view. It was only later i.e., on 26.8.2016, the Hon'ble Karnataka High Court in the case of *Fateraj Singhvi (supra)* took the view that without enabling provision like u/s.200A(1)(c) of the Act, which enabling provisions came into effect only from 1.6.2015, there cannot be levy of late fee u/s.234E of the Act. The Assessee's business was small and all affairs had to be looked after by the Assessee as proprietor. Further the TDS compliance are web based and system driven and the Assessee was unable to long into the traces and reply to the notices/orders within stipulated time. It was also stated that the TDS assessment orders which were subject matter of appeal before CIT(A) were not served on the Assessee. The Assessee has also stated that after the decision of the Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi (supra)*, he was under the impression that no late fee will be levied u/s.234-E of the Act in respect of the period prior to 1.6.2015 as the enabling provisions u/s.200A of the Act, were introduced only from 1.6.2015. The Assessee however on 4.2.2019 received a demand notice for late fee u/s.234-E of the Act dated 30.1.2019. Thereafter the Assessee approached his auditor and they informed that the remedy was to file appeal against the orders u/s.200A of the Act. The Assessee submitted that he was not guilty of negligence and the delay was due to bonafide reasons set out above. The Assessee also placed reliance on decision of

Hon'ble Supreme Court in the case of *State of Haryana Vs. Chandramani (TS 5109-SC-1996-O)* wherein it was held that the expression "sufficient cause" should be considered with pragmatism and in a justice oriented approach rather than technically and *CMJ Foundation Vs. Principal CIT (TS 6571-ITAT-2019(Gauhati)-O)* wherein it was held that bonafide belief that appeal should not be filed is sufficient cause for condonation of delay. The Assessee also relied on the decision in the case of *Collector of land acquisition Vs. Mst. Katiji & Others AIR 1987 1353 (SC)* wherein principles regarding condonation of delay have been explained by the Hon'ble Supreme Court.

8. The CIT(A) however was of the view that there was a difference between marginal delay and inordinate delay and made reference to a decision of ITAT Hyderabad Bench in the case of *T. Krishna Vs. ACIT(IT(SS)A.No.23 & 25/Hyd/2011)* and held that the Assessee should explain the delay as one that occurred due to circumstances beyond his control. He also referred to decision of Hon'ble Supreme Court in the case of *Ramalal Vs. Rewa Coalfields Ltd. AIR 1962 SC 361* wherein it was held that delay caused which by due care and attention could have been avoided cannot be said to be reasonable cause. He also referred to decisions where delay was not condoned for the reason that the conduct and negligence of the Assessee existed for the delay in filing appeal. He held that the reasons assigned by the Assessee were routine explanation which cannot be accepted as reasonable or sufficient cause. The CIT(A) accordingly dismissed the appeals as unadmitted.

9. Aggrieved by the aforesaid orders of the CIT(A), the Assessee has filed the present appeals before the Tribunal. The learned counsel for the Assessee reiterated stand of the Assessee as put forth before CIT(A) and the grounds raised before the Tribunal in which it has been stated that when the levy of fee is unconstitutional to that extent the levy itself is illegal

and in such circumstances delay in filing appeal which is only technical should be condoned.

10. The learned DR reiterated the stand of the revenue as reflected in the order of the CIT(A).

11. We have considered the submissions of the learned DR and also the grounds of appeal filed by the Assessee. An intimation u/s.200A of the Act became an appealable order u/s.246A of the Act, only consequent to amendment by the Finance Act, 2015 w.e.f. 1.6.2015. Prior to the said date an intimation u/s.200A was not appealable. At the outset, we observe that the Hon'ble Supreme Court, in the case of Mst. Katiji (supra), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. The ITAT Hyderabad Bench in the case of *MSV IT Solutions Ltd. Vs. ITO, Ward 16(4) ITA Nos. 177 & 178/Hyd/2018* order dated 26.10.2018 wherein on identical facts noticing that there was no legal remedy prior to 1.6.2015 against an intimation u/s.200A of the Act, the Hyderabad Bench condoned delay in filing appeal before CIT(A).

12. Considering the reasons given by the Assessee for condonation of delay and keeping in mind that technicalities should not stand in the way of rendering substantive justice, we are of the view that the delay in filing the appeals deserves to be condoned. Since the CIT(A) has not decided the issue on merits, the order of the CIT(A) is set aside and the issue on

merits is remanded to the CIT(A) with direction to decide the appeals of the Assessee on merits, in accordance with law, with due opportunity to the Assessee of being heard.

13. In the result, all the appeals by the assessee are treated as allowed for statistical purpose.

Pronounced in the open court on this 22nd day of January, 2020.

Sd/-

Sd/-

(A.K.GARODIA)
ACCOUNTANT MEMBER

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 22nd January, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.