

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

**[Coram: Pramod Kumar (Vice President)
And Amarjit Singh (Judicial Member)]**

ITA No. 513/Mum/2019
Assessment year: 2016-17

Vivek Jaiprakash Desai
*Office No. 1, Building NO.3,
Vivina CHSL.M.A. Road Opp.,
Andheri West Railway Station,
Andheri (W), Mumbai -400 058
[PAN: AGJPD 9649 E]*

.....Appellant

Vs

ACIT-CPC(TDS)
*Aayakar Bhawan, Sector-3,
Vaishali, Ghaziabad,
UP-201 010*

.....Respondent

Appearances by

S. D. Chheda for the appellant
Chaudhary Arunkumar Singh for the respondent

Date of concluding the hearing : January 29, 2020
Date of pronouncement : January 31, 2020

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 19.09.2018, passed by the CIT(A)-60, Mumbai, in the matter of levy of late fee under section 234E r.w.s. 200A of the Income Tax Act, 1961, for the financial year 2015-16.

2. Grievances raised by the appellant are as follows:

- 1) That the learned CIT (A) has erred in law and in facts to confirm action of ACIT-CPC (IDS) to levy late fees of Rs.33,750/- & issued order U/s 200A of the Act.
- 2) The learned CIT (A) has failed to understand that the appellant was not liable to deduct the TDS as he being an individual and his last year turnover i.e. of F.Y.14-15 did not

exceed the limit specified u/s 44AB and the appellant cannot be charged with penalty when there was no responsibility for deduction of TDS u/s 190 to 203AA.

3) *The learned CIT (A) has failed to understand that when 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, then such power comes into effect from the date of substitution and cannot be applied retrospectively.*

3. To adjudicate on this appeal it is sufficient to take note of the fact that out of the impugned levy of Rs.33,750/- under section 234E, the levy of Rs.30,000/- pertains to the period prior to 01.06.2015, and the issue whether such a levy under section 234E r.w.s. 200A of the Act could be made is now covered in favour of the assessee by a co-ordinate bench decision in the case of *Gangamai College of Engineering vs. ACIT* (in ITA Nos. 1167 to 1171/Pun/2018, vide order dated 06.11.2018) wherein the co-ordinate bench has, *inter alia*, observed as follows:

10. *Since the issue arising in the present bunch of appeals is similar to the issue before the Tribunal in the cases of Medical Superintendent Rural Hospital and Junagade healthcare Pvt. Ltd. (supra) and we have decided both the issues in favour of assessee, we hold that the assessee is not liable for levy of late filing charges under section 234E of the Act for the period prior to June, 2015 in the absence of amendment to section 200A of the Act, which was brought on Statute from 01.06.2015. Consequently, we also hold that the appeals filed by assessee were in time since the period has to be reckoned from the date of order under section 154 of the Act and not from the date of issue of intimation under section 200A of the Act. Accordingly, we delete late filing fees levied under section 234E of the Act for the period prior to June, 2015 though the returns of income were filed after June, 2015 and even order levying late filing fees under section 234E of the Act was passed after Jun2, 2015. The grounds of appeal raised by assessee are thus, allowed.*

4. Having heard the rival contentions and having perused the material on record, we see no reasons to take any other view of the matter than the view so taken by the co-ordinate bench. Respectfully following the same, we grant relief to the extent of Rs.30,000/- as above. To this extent, grievance of the assessee is upheld.

5. In the result, the appeal is partly allowed in terms indicated above. Pronounced in the open court today on the 31st day of January, 2020

Sd/-

Amarjit Singh
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 31st day of January, 2020

Copies to:

<i>(1) The Applicant</i>	<i>(2) The respondent</i>
<i>(3) CIT</i>	<i>(4) CIT(A)</i>
<i>(5) DR</i>	<i>(6) Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*