

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.5918/Del/2016

निर्धारणवर्ष/Assessment Year:2013-14 (F.Y. 2012-13)

Sub Divisional Office Civil Panipat, Sub Divisional Office, Secretariat, Panipat.	बनाम Vs.	ITO(TDS) Karnal.
PAN No. RTKS07590C		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Vipul
राजस्वकीओरसे /Revenue by	Shri S.S. Rana, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	06.11.2019
उद्घोषणाकीतारीख/Pronouncement on	03.02.2020

आदेश /O R D E R

PER AMIT SHUKLA, J.M.

1. The aforesaid appeal has been filed by the assessee, against impugned order dated 02.09.2016, passed by the Ld. CIT(Appeals), Karnal in relation to order passed u/s 200A of the I.T. Act, 1961 for the 2nd Quarter of F.Y. 2012-13 relating to AY 2013-14.

2. In grounds of appeal, assessee has challenged the levy of late filing fee of Rs. 22,570/- u/s 234E of the Act.

3. The facts in brief are that the assessee is a local body named as "Sub Divisional Office Civil Panipat". The Ld. AO on the basis of order of

the CPC observed that, return u/s 200A of the Act was filed by the assessee on 01.08.2015 which is beyond the due date of 01.06.2015 and, accordingly, late fees u/s 234E of the Act has been levied by the ITO (TDS, Karnal) and accordingly, intimation u/s 200A of the Act was issued to the assessee.

4. Before the Ld. CIT(A), the assessee submitted that there was no provision for levying fee u/s 234E prior to 01.06.2015, whereby fee has been prescribed u/s 200A of the Act and, therefore, demand of Rs. 22,570/- should be deleted. However, the Ld. CIT(A) dismissed the assessee's appeal after relying upon the judgment of Hon'ble Bombay High Court in the case of Rashmikant Kundalia and another Vs. Union of India in W.P. No. 771 of 2014 judgment and order dated 06.02.2015, wherein the constitutional validity of Section 234E has been upheld.

5. After hearing both the parties and on perusal of the impugned material placed on record, we find that, it is an undisputed fact that for the 2nd Quarter of F.Y. 2012-13 the assessee has deposited the TDS of Rs. 22,570/- on salary to the credit of Government and filed the TDS statement in Form 24Q on 01.08.2015. The said TDS statement was processed and late filing fee u/s 234E read with section 200A for Rs. 22,570/- has been determined. The levy of fee u/s 234E in terms of violation u/s 200A has been provided in clause(c) of section 200A of the Act, whereby payment of late fee has been prescribed. But such levy has been brought in the statute by the Finance Act, 2015, w.e.f. 01.06.2015.

Before the said date there was no fee leviable. Thus, when there was no enabling provision for levy of fee, in section 200A, then no such fee can be levied u/s 234E and the same is directed to be deleted.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 03.02.2020

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 03.02.2020
**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi