

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5509/Del/2016 : Asstt. Year : 2014-15

Sh. Ashok Kumar Jain, Pankaj Sharma, Advocate, 34, Vijay Block, Near Nathu Sweets, Vikas Marg, Laxmi Nagar, Delhi-110092	Vs	DCIT(TDS), CPC, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAIPJ9789P		

Assessee by : None

Revenue by : Sh. Amit Jain, Sr. DR

Date of Hearing: 10.02.2020

Date of Pronouncement: 17.02.2020

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The aforesaid appeal has been filed by the assessee against the order of Ld. CIT(Appeals) -41, New Delhi dated 11.07.2016 on the issue of section 200A of the Act, levy of late filing fees /penalty u/s 234E of the Act for the assessment year 2014-15 for the fourth quarter of financial year 2013-14 which was filed on 28.03.2015 which is beyond the due date.

2. None appeared on behalf of the assessee.

3. The facts in brief are that in the order passed u/s 200A of the Act, late filing fee of Rs. 47,000/- u/s 234E of the Act has been levied. It was submitted that levy of fee u/s 234E of the Act can be levied only when there is an enabling provision prescribed u/s 200A of the Act, which has come w.e.f. 1st June , 2015. However Ld. CIT(A) after referring to the

judgment of Hon'ble Bombay High Court in the case of Rashmikant Kundalia vs. Union of India and decided the issue against the assessee.

4. Before us Ld. DR has relied upon the judgment of Hon'ble Delhi High Court in the case of Biswajit Das vs Union of India 413 ITR 92 and also judgment of Hon'ble Bombay High Court in the case of Mr. Rashmikant Kundalia vs Union of India and Writ petition No. 771 of 2014 and submitted that the levy of fee u/s 234E of the Act is automatic wherever there is a delay in view of statement of tax at source.

5. After considering the impugned orders we find delay in filing of statement in regard third quarter for the financial year 2014-15. The demand has been raised by the department u/s 200 of the Act in terms of failure to comply with section 200A of the Act which deals with the processing of statement of tax deducted at source u/s 200 of the Act. First of all, sub section 3 of section 200 of the Act provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time and prepare such statement for such period as may be prescribed. Provision of section 200A of the Act provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200 of the Act, then such statement shall be processed in the manner given therein. Clause (c) of section 200A of the Act has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:-

"(c)the fee, if any, shall be computed in accordance with the provisions of section 234E;"

6. Fee for default u/ s 234E of the Act provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3) of the Act, then that person shall be liable to pay

fee in the manner provided therein. Thus, fee u/s 234E of the Act is leviable if the statement is not filed as prescribed u/s 200(3) of the Act which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A (4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. The relevant provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A of the Act in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & Ors vs. Union of India reported in (2016) 289 CTR 0602, wherein the Court made following observations :-

"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for

the previous period or previous year prior to 1.6.2015 could not have been made."

7. The judgment relied upon by the Ld. DR relate to constitutional validity and vires of the provision of section 234E. Nowhere in the judgments Hon'ble Courts have held that the fees u/s 200A read with section 234E shall be levied prior to 1.06.2015, because prior to this date has not prescribed levy of fees u/s 200A. Thus, we hold that no fee was leviable to the assessee u/ s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled. Accordingly, the appeal of the assessee is allowed.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 17/02/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 17/02/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR