

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER &
SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 5323/Mum/2018

(निर्धारण वर्ष / Assessment Years : 2015-16)

Sun Realty Landmark LLP 1 st floor, Paras, MG Road, Kandivali west, Mumbai.	बनाम/ Vs.	ACIT(CPC) TDS, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABVFS3388P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	None
प्रत्यर्थी की ओर से/Respondent by :	Shri Vinod Kumar, DR

सुनवाई की तारीख / Date of Hearing	28/11/2019
घोषणा की तारीख /Date of Pronouncement	10/12 /2019

आदेश / ORDER

PER S. RIFAUR RAHMAN:

This is an appeal filed by the assessee against the order of the Ld. CIT(A)-60, Mumbai dated 04.06.2018 for the A.Y 2015-16.

2. Brief facts of the case are that the assessee company filed its statements in Forms 24Q for Q1 to Q4 for F.Y 2014-15 relevant to A.Y 2015-16. On verification of this statement, the AO noticed that the assessee filed the

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statement, belatedly and hence, raised a demand on account of late filing levy u/s 234E by issuing intimations u/s 200A.

3. Against the said action of AO, assessee preferred appeal before the CIT(A) raising a ground that the provisions to include late fee u/s 234E in 'Intimation u/s 200A is not permissible under law and consequently such levy is unsustainable in law and hence the levy is liable to be deleted.

4. Before the CIT(A), the AR of the assessee contended that the provisions to include late fee u/s 234E in the intimation u/s 200A of the Act came into effect only through the Finance Act, 2015 w.e.f. 01/06/2015 and, hence, prior to 01/06/2015 such inclusion of late fee u/s 234E in the intimation u/s 200A is not permissible under the law. In this contention, he relied on various case law, which were extracted by the CIT(A).

5. After considering the submissions of the assessee, the CIT(A) confirmed the late filing levy u/s 234E of the Act.

6. Aggrieved by the orders of CIT(A), the assessee preferred appeals before us raising the following grounds of appeal:

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“1. For that the CIT(A)-60, Mumbai dismissed the appeal filed by the assessee. The brief facts of the case are that in all the above appeals under consideration, admittedly there was a delay in filing of TDS statement and during the processing of TDS return, the AO (TDS) raised demand by way of intimations issued u/s 200A of the Act for levy of fees u/s 234E for delay filing of TDS statements for Quarter 1 to 4 in the A.Y 2015-16 and passed order dated 01.10.2015.

2. Aggrieved by the order of AO, the assessee filed appeals before the CIT(A). The CIT(A) after considering the grounds of appeal of the assessee has dismissed the appeals.

3. Now, the assessee is in further appeals before your honour as this issue is no longer *re integra* since the Hon'ble Karnataka High Court in *Fatehraj Singhvi V. union of Inida (289 CTR 0602)* has held that *w.e.f 01.06.2015*, the Parliament by way of an amendment to Sec. 200A of the Act, has empowered the AO to levy fee u/s 234E of the Act while processing u/s 200A of the Act.

4. Therefore, prior to that date i.e 01.06.2015, the AO had no authority to levy fee u/s 234E of the Act. Therefore, the AO erred in levying the fee u/s 234E of the Act which been wrongly confirmed by the Ld. CIT(A) and, therefore, the impugned orders of the Ld. CIT(A) need to be deleted”.

7. At the time of hearing, none appeared on behalf of the assessee and this issue is in favour of assessee. Hence, taken up for disposal of the same by hearing the Ld. DR. Considered the submissions of the Ld. DR and perused the material on record. We find that similar issue came up for consideration before the coordinate bench of Hyderabad Tribunal in the case of *M/s Terra Infra Development Ltd., Hyderabad* in ITA Nos. 1876 & 1875/Hyd/2017

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for AYs 2013-14 and 2014-15, order dated 03/10/2018 wherein the coordinate bench has held as under:

4. We find that though the provisions for levy of fee in certain cases has been brought into the Statute book w.e.f. 1.7.2012, it has been brought under the purview of [section 200A](#) only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra) we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior to 1.6.2015. For the sake of ready reference, the relevant para is reproduced hereunder:

"10. Now coming to the merits of the case, we find force in the argument of the learned Counsel for the assessee that prior to 01.06.2015, there was no mandate, as per the Statute, to make any adjustment on account of levy of fees u/s 234E while processing TDS returns u/s 200A. We have taken note of the order of the Hon'ble Gujarat High Court holding the amendment made to [section 200A](#) w.e.f. 01.06.2015, giving power to make adjustment on account of fees u/s 234E while processing returns u/s 200A to be retrospective in nature, stating that this power given to the AO is a machinery provision while the substantive provision of the power to levy fees u/s 234E was always there on the Statute from 01.06.2012. But at the same time, we note that the Hon'ble Karnataka High Court held that levy of fees u/s 234E while processing returns, TDS u/s 200A prior to 01.06.2015 was without any authority of law. With two divergent view of the Hon'ble High Courts on the issue and in the absence of any decision by the jurisdictional High Court, we concur with the learned Counsel for the assessee that as per the

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well accepted rule of construction, if two reasonable constructions of a statute are possible the construction which favours the assessee must be adopted. In view of the same, respectfully following the decision of the Karnataka High Court in the case of Fatheraj Singhvi (Supra), we hold that the fees levied in all the present cases u/s 234E prior to 01.06.2015 in the intimations made u/s 200A was without authority of law and the same is therefore, directed to be deleted. In view of the above, all the appeals of the assessee stand allowed".

5. Respectfully following the same, assessee's appeals for both the A.Ys are allowed."

7.1 In the case under consideration, on perusal of record, we find that the TDS returns filed by the assessee for the relevant period i.e., FY 2014-15 Quarter - 4 was prior to 01/06/2015. Therefore, respectfully following the said decision of the coordinate bench, we set aside the order of CIT(A) and direct the AO to delete the fees levied u/s 234E.

8. In the result, the appeal filed by the assessee is allowed.

This Order pronounced in Open Court on	10/12/2019
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Sd/-
(RAVISH SOOD)
(JUDICIAL MEMBER)

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai, Dated 10/12/2019

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KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Mumbai

2. Other Member...
3. Date on which the approved draft comes to the Sr.P.S./P.S.....
4. Date on which the fair order is placed before the Dictating Member for pronouncement.....
6. Date on which the fair order comes back to the Sr.P.S./P.S.....18.1.18
7. Date on which the file goes to the Bench Clerk.....18.1.18
8. Date on which the file goes to the Head Clerk.....
9. The date on which the file goes to the Assistant Registrar for signature on the order.....
10. Date of Despatch of the Order.....