

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai**

**Before Shri M. Balaganesh, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA Nos.6918 & 6919/Mum/2017
(Assessment Year: 2015-16)**

Mr. Imtiyaz A Palkar
686C Palkar House
Old Post Lane Alibaug,
Raigad - 402201

CIT(Appeals)-3
Thane Camp
Vs. Nashik

PAN – AATPP5701A

(Appellant)

(Respondent)

Appellant by: By Written Submissions
Respondent by: Shri Padmapani Bora, D.R
Date of Hearing: 30.01.2020
Date of Pronouncement: 31.01.2020

ORDER

PER RAVISH SOOD, JM

The present appeals filed by the assessee are directed against the consolidated order passed by the CIT(A)-3, Nasik, (Camp office: Thane), dated 15.09.2017, which in turn arises from the respective intimations received from the Assistant Commissioner of Income Tax, Central Processing Cell-TDS, Ghaziabad, under Sec.200A of the Income Tax Act, 1961 (for short 'Act') for the first quarter (Q1) and second quarter (Q2), both dated 30.04.2016.

2. Briefly stated, the assessee had delayed filing of its respective statements of tax deduction at source in 'Form 26Q' for the first quarter (Q1) and second quarter (Q2) for A.Y. 2015-16. Resultantly, the ACIT, Central Processing Cell-TDS levied late filing fees of Rs.78,500/- and Rs.95,000/-, respectively, under Sec. 234E of the Act.

3. Aggrieved, the assessee assailed the imposition of late filing fees under Sec.234E before the CIT(A). It was observed by the CIT(A) that prior to 01.06.2015 there was no enabling

provision in Sec.200A for levying late filing fee under Sec.234E of the Act. Accordingly, the CIT(A) observed that the A.O could make an adjustment of late filing fee under Sec. 234E of the Act only w.e.f 01.06.2015. Accordingly, the CIT(A) was of the view that an adjustment for late filing fee under Sec. 234E could be made only in a case where the return was processed subsequent to 01.06.2015 i.e the date on which the enabling provision for levying late filing fee under Sec. 234E was incorporated in Sec.200A of the Act. On the basis of his aforesaid observations, the CIT(A) was of the view that as the statements filed by the assessee for both of the aforementioned quarters i.e 'Q1' and 'Q2' on 26.04.2016 were processed on 30.04.2016 i.e after the aforesaid amendment was made in Sec.200A, therefore, the A.O was justified in imposing late filing fee under Sec.234E of the Act. Accordingly, the CIT(A) on the basis of his aforesaid deliberations upheld the levy of fee under Sec. 234E of the Act and dismissed the appeals of the assessee for both the aforementioned quarters.

4. The assessee being aggrieved with the orders passed by the CIT(A) for the aforementioned quarters viz. 'Q1' and 'Q2' for A.Y. 2015-16 has carried the matter in appeal before us. We find that the assessee had preferred to represent his case on the basis of 'Written Submissions', dated 08.05.2019. On a perusal of the records, we find that it is stated by the counsel for the assessee that the matter may be decided after considering the 'Written Submissions' that had been filed by him.

5. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities. It was averred by the Id. D.R that as the respective statements of tax deducted at source for the aforementioned quarters viz. 'Q1' and 'Q2' were filed after the cut off date i.e subsequent to the amendment to Sec.200A w.e.f 01.06.2015, therefore, the A.O was totally justified and vested with the requisite jurisdiction to levy fees under Sec.234E of the Act. On the basis of his aforesaid contention it was submitted by the Id. D.R that as the appeal of the assessee was devoid of any merit, therefore, the same did not merit acceptance.

6. We have heard the Id. D.R and also perused the 'Written Submissions' filed by the assessee, as well as the orders of the lower authorities and the judicial pronouncements relied upon by the parties before us. Admittedly, it is a matter of fact borne from the records that the assessee had delayed the filing of the statements of tax deduction at source in 'Form 26Q' for both of the aforesaid quarters i.e 'Q1' and 'Q2' relevant to assessment year 2015-16. On a

perusal of the records, it stands revealed that the statements of tax deduction at source for both the said quarters were filed by the assessee in 'Form 26Q' on 26.04.2016, which thereafter were processed under Sec.200A of the I.T Act on 30.04.2016. We find that the **Hon'ble High Court of Karnataka** in the case of **Fatheraj Singhvi & Ors. Vs. Union of India (2016) 289 CTR 602 (Kar.)** had concluded, that the intimation under Sec.200A of the I.T. Act computing fee under Sec.234E to the extent the same related to the period of the tax deducted prior to 01.06.2015 was liable to be set aside. The aforesaid judgment of the **Hon'ble High Court of Karnataka** had thereafter been relied upon by the **ITAT, Chandigarh** in the case of **Sonalac Paints & Coatings Ltd. Vs. DCIT (2018) 167 DTR 83 (Chd.)**. In the aforesaid case, it was observed by the Tribunal that levy of fees under Sec.234E while processing the TDS returns under Sec.200A prior to 01.06.2015 was without any authority of law. On the basis of its aforesaid observations, the Tribunal had concluded that the fees levied under Sec.234E prior to 01.06.2015 in the intimations made under Sec. 200A was without any authority of law and was liable to be deleted. Apart therefrom, we find that the issue involved in the appeal before us is also covered by an order of the **ITAT, Amritsar** in the case of **Tata Rice Mills Vs. ACIT (CPC), TDS Ghaziabad (ITA No. 395/ASR/2016; dated 25.10.2017)**. In the aforementioned case, it was observed by the Tribunal that the assessee had filed its statement of tax deduction at source for the 'second quarter' relevant to Financial year 2014-15 on 19th June, 2015, which was thereafter processed on 23.06.2015 by the ACIT-TDS, CPC and a late fee under Sec. 234E of Rs. 49,400/- was charged in the intimation issued under Sec. 200A of the I.T. Act. It was observed by the Tribunal that as the amendment made to Sec.200A was effective from 01.06.2015 and applicable prospectively, hence no computation of fee under Sec.234E could be made for the TDS deducted prior to 01.06.2015.

7. We have given a thoughtful consideration to the issue before us and finding ourselves as being in agreement with the view taken by the Tribunal in the case of Tata Rice Mills (supra), are of the considered view that the ACIT-TDS, CPC Ghaziabad in the case before us had erred in levying fees under Sec.234E in respect of tax deducted at source for both of the aforesaid quarters i.e 'Q1' and 'Q2' pertaining to F.Y. 2014-15, i.e prior to 01.06.2015. We thus not being persuaded to subscribe to the view taken by the CIT(A) who had upheld the levy of fees by the A.O 'set aside' his order and vacate the demand raised by the A.O under Sec.234E in the hands of the assessee for both of the aforesaid quarters for the year under consideration.

8. Accordingly, the fees levied by the ACIT, CPC-Ghaziabad under Sec.234E for 'Q1' (Rs.78,500/-) and 'Q2' (Rs.95,000/-) for F.Y. 2014-15 are deleted.

9. Resultantly, both the appeals filed by the assessee for A.Y. 2015-16 i.e. ITA Nos. 6918 & 6919/Mum/2017 are allowed in terms of our aforesaid observations.

Order pronounced in the open court on 31.01.2020

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 31.01.2020
P.S Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai