

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.510/Ind/2019

M/s Keshav Industries Pvt. Ltd, Indore

PAN: AADCK5715G

Assessment Year 2013-14 (Q-4)

Appellant by	Shri Pankaj Mogra, AR
Respondent by	Shri Punit Kumar, Sr. DR

ITA Nos. 500 to 508/Ind/2019

Mr. Rajendra Prasad Tiwari

PAN:AATPT3684Q

Assessment Years: 2013-14 (Q-2), (Q-3), (Q-4), 2014-15 (Q-1), (Q-2), (Q-3), 2015-16 (Q-1), (Q-2) & (Q-3)

Appellant by	None
Respondent by	Shri Punit Kumar, Sr. DR

Date of Hearing:	14.07.2020
Date of Pronouncement:	14.07.2020

आदेश / O R D E R

PER BENCH:

The above captioned bunch of 10 appeals are at the instance of respective assessee(s) and are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I & (Appeals)-II, Indore (in short 'CIT(A)') respectively. As the issue raised in all these appeals are similar, these were heard together and are being disposed of by this common order for the sake of convenience and brevity.

2. From perusal of the grounds we find that only one issue needs to be adjudicated as to whether the Revenue authorities were justified in levying the late fees u/s 234E of the Act while processing the statement of tax deducted at source u/s 200A of the Act before the amendment was brought in w.e.f. 01.06.2015 in the provisions of section 200A of the Act.

3. Brief facts common in all these appeals are that the appellant was required to file the statement of tax deducted at source for the respective quarter but failed to do so within the due date prescribed in the law for filing such quarterly TDS returns. As per the provisions of section

234E of the Act, fee for default in furnishing the statement is leviable if the statement of TDS are not delivered within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act.

4. The revenue authorities have levied the late fees for default in furnishing the statement in the processing of statement of tax deducted at source prepared u/s 200A of the Act. Against the levy of late fee u/s 234E in the statement processed u/s 200A of the Act, appeal was preferred by the assessee(s) for respective quarters for the respective assessment years before Ld. CIT(A) pleading that before the amendment was brought in by the Finance Act, 2015 w.e.f. 01.06.2015, the revenue authorities were not having the power to levy the late fees u/s 234E of the Act in the statement processed u/s 200A of the Act.

5. However, assessee failed to succeed in all these 10 appeals before Ld. CIT(A) and now are in appeals before the Tribunal raising the above referred common issue.

6. At the outset, Ld. counsel for the assessee submitted that the common issue is squarely covered in favour of the

assessee by the decision of the Coordinate Bench, Indore in the case of Indore School of Social Work, Indore ITA Nos.117 to 120/Ind/2019 and others order dated 20.02.2020.

7. Per contra Ld. Departmental Representative vehemently argued supported the order of Ld. CIT(A).

8. We have heard the rival contentions and perused the record placed before us and carefully gone through various judgments referred and relied by the Ld. Counsel for above captioned assessee. The common issue raised in all these bunches of appeals is that whether the Ld. CIT(A) was justified in confirming the levy of late fee u/s 234E of the Act in the statement of tax deducted at source processed u/s 200A of the Act, even when the amendment brought in the Finance Act 2015 w.e.f. 01.06.2015 paved the way for levying the fee u/s 234E of the Act in the statement processed u/s 200A of the Act.

9. From perusal of the above issue we find that the same has been adjudicated by us in the case of Indore School of Social Work, Indore ITA Nos.117 to 120/Ind/2019

order dated 20.02.2020 after examining similar facts as well as various judicial pronouncements. The revenue authorities failed to controvert the contention of Ld. counsels for the assesseees that the common issue raised in all these bunch of 10 appeals are squarely covered in favour of assessee(s) by the decisions in the case of Indore School of Social Work, Indore ITA Nos.117 to 120/Ind/2019 & others order dated 20.02.2020, State Bank of India, Genda Chowk and others dated 13.11.2018(supra) and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/2017 & others, order dated 20.12.2018(supra) and Bhupesh Kumar J. Sanghvi & others in ITA No.15/Ind/2018 & others, order dated 22.01.2019 (supra) wherein the Tribunal after following the decisions decided in favour of the assessee observing as follows:-

“12. We, therefore, in the given facts and circumstances of the case as well as following the decisions given by us in the case of State Bank of India, Genda Chowk and others dated 13.11.2018 (supra) and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/ 2017 & others, order dated 20.12.2018(supra) and Bhupesh Kumar J. Sanghvi & others in ITANo.15/Ind/2018 & others,

order dated 22.01.2019(supra) are of the opinion that in the given set of facts of the instant appeals wherein fee u/s 234E of the Act was levied in the statements processed u/s 200A of the Act before 01.06.2015 i.e. before the amendment brought into effect from 01.06.2015 in section 200A of the Act thereby enabling the revenue authorities to raise demand in respect of levy of fees u/s 234E of the Act. Ld. CIT(A) erred in confirming the levy of late fees u/s 234E of the Act by the assessing officer. Accordingly findings of ld. CIT(A) in all these 165 appeals are reversed and revenue is directed to delete the levy of fees u/s 234E of the Act in all these 165 cases. Thus, common issue raised in these bunch of appeals is decided in favour of the assesseees. “

10. We also observe that the Co-ordinate Bench Agra in the case of Sudershan Goyal Vs DCIT (TDS) ITA No.442/Agra/2017 order dated 09.04.2018 considering the similar issue deciding in favour of the assessee observed as follows:-

“The issue involved in this appeal is as to whether late filing fee u/s 234E of the IT Act has rightly been charged in the intimation dated 10.11.2013 issued u/s 200A of the Act while processing the TDS returns/statement, the enabling clause

(c) having been inserted in the section w.e.f. 01.06.2015. Before 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for

a period prior to 01.06.2015, no late fee could be levied in the intimation issued u/s [200A of the Act](#).

3. *Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on '[Rajesh Kaurani vs. UOI](#)', 83 Taxmann.com 137 (Guj), wherein, it has been held that [section 200A](#) of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 delivered after considering numerous ITAT/High Court decisions and so, this decision in '[Rajesh Kaurani](#)' (supra) holds the field.*

4. *We do not find the view taken by the ld. CIT(A) to be correct in law. As against '[Rajesh Kaurani](#)' (supra), '[ShriFatehrajSinghvi and Others vs.UOI](#)', 73 Taxmann.com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing '[Rajesh Kaurani](#)' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in '[CIT vs. Vegetable Products Ltd.](#)', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.*

5. *In '[Shri Fatehraj Singhvi and Others](#)' (supra) it has been held, inter alia, as follows:*

"22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause

(c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."

6. In view of the above, respectfully following 'Shri Fatehraj Singhvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

11. We, therefore respectfully following above decisions are of the opinion that in the given set of facts of the instant appeals wherein fee u/s 234E of the Act was levied in the statements processed u/s 200A of the Act before 01.06.2015 i.e. before the amendment brought into effect from 01.06.2015 in section 200A of the Act thereby enabling the revenue authorities to raise demand in respect of levy of fees u/s 234E of the Act, Ld. CIT(A) erred in confirming the levy of late fees u/s 234E of the Act by the assessing officer. Accordingly findings of Ld. CIT(A) in all these 10 appeals are reversed as we have recently taken a

considered view against the revenue on earlier orders of Ld. CIT(A) wherein the identical orders by respective CIT(A) were passed and accordingly the revenue is directed to delete the levy of fees u/s 234E of the Act in all these 10 cases. Thus, common issue raised in these bunch of appeals is decided in favour of the assessee(s).

12. In the result, all 10 appeals at the instance of assessee(s) are allowed.

Order was pronounced in the open court on 14.07.2020.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 14/07/2020
/Dev

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar, Indore