

THE INCOME TAX APPELLATE TRIBUNAL
“C” Bench, Mumbai
Before Shri A.D. Jain (VP) & Shri Shamim Yahya (AM)
I.T.A. No. 1674/Mum/2019 (Assessment Year 2013-14)

Popular Catering Services (Partner-Vithal A. Shetty) Bungalow -1, Plot No. 162 Arihant Villa, 15 th Road Chembur, Mumbai-71 PAN : AAKFP8531B (Appellant)	Vs.	DCIT, CPC-TDS Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	None
Department by	Shri V. Vinod Kumar
Date of Hearing	12.03.2020
Date of Pronouncement	17.07.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against order of learned CIT(A) dated 13.8.2018 and pertains to assessment year 2013-14.

2. The grounds of appeal read as under :-

1. The learned Deputy Commissioner of Income Tax CPC-TDS has erred in levying late fee under section 234E amounting to Rs. 11,800.
2. The appellant prays that the late fee is levied for the period prior to 01.06.2015 i.e. prior to enactment of sec 234E.
3. The appellant relies on the decision passed by the ITAT, Mumbai in the case of Ravi Kumar Valecha V/s. Assessing Officer TDS ward, Kalyan, in ITA no. 4822/MUM/2016 dated 15.06.2018.
4. The appellant prays that the order passed by the learned assessing officer be set aside.
5. The appellant craves, leaves to add, alter or amend any of the aforesaid grounds of appeal on or before the date of hearing.

3. We have heard the learned departmental representative and perused the records. None appeared on behalf of the assessee despite notice. In our considered opinion the issue in dispute can be disposed of by producing the records and hearing the learned departmental representative.

4. The sole issue in dispute is chargeability of late fee under section 234E of the I.T. Act amounting to Rs. 11,800/-, as to whether the same can be levied prior to 1.6.2015, i.e. prior to enactment of section 234E. The learned CIT(A) has decided the issue by following the decision of honourable Gujarat High Court in case of Rajesh Kourani Vs. UOI (83 taxmann.com 137). Though CIT(A) has noted the decision of honourable Karnataka High Court in the case of Sri Fatheraj Singhvi Vs. UOI (73 taxmann.com 252) which is in favour of the assessee he has chosen not to follow the same. In this regard he also distinguished the decision of honourable Supreme Court in the case of Vegetable Products Ltd. (88 ITR 192) by referring that the said decision was in connection with penalty.

5. Upon careful consideration we find that learned CIT appeals has totally erred in distinguishing the decision of honourable Supreme Court in the case of vegetable products. The ratio arising from the said decision is that if two constructions are possible the one in favour of assessee should be applied. In the present case we note that the decision of honourable Karnataka High Court is in favour of the assessee. Accordingly we follow the said decision on the touchstone of ratio arising from honourable Supreme Court decision in the case of Vegetable Products Ltd. (supra). No decision contrary to this from the honourable jurisdictional High Court has been brought to our notice. Furthermore as referred by the assessee in grounds of appeal the issue is also covered in favour of the assessee by the decision of ITAT Mumbai.

6. Accordingly we set aside the orders of authorities below and decide the issue in favour of assessee.

7. In the result appeal filed by the assessee stands allowed.

Order has been pronounced under rule 34(4) of ITAT Rules on 17.07.2020.

Sd/-

(A.D. JAIN)
VICE PRESIDENT

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17/07/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai