आयकर अपीलीय अधिकरण, दिल्ली न्यायपीठ "ए", नई दिल्ली में

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

सुश्री सुषमा चावला, उपाध्यक्ष एवं डॉ. बी आर आर कुमार, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, VP & Dr. B.R.R. KUMAR, AM

[THROUGH VIDEO CONFERENCING]

Sl. No.	ITA Nos.	Name of Appellant	Name of Respondent	Assessment Year
1	7396/Del/2017	S.D. Senior Secondary School, Hill road, Ambala Cannt. Haryana PAN-AACAS5679J	ITO, TDS, Karnal, Haryana	2013-14
2	7397/Del/2017	Do	Do	2014-15
3	7398/Del/2017	Do	Do	2015-16
4	7399/Del/2017	Sanatan Dharam Educational Society, Jagadhri Road, Ambala Cannt. Haryana PAN-AACAS9122Q	ITO, TDS, Karnal, Haryana	2013-14
5	7400/Del/2017	Do	Do	2014-15

अपीलार्थी की ओर से / Appellant by : Sh. Sudhir Sehgal, Advocate
प्रत्यर्थी की ओर से / Respondent by : Sh. M. Baranwal, Sr.DR

Sl. No.	ITA Nos.	Name of Appellant	Name of Respondent	Assessment Year	Quarter	Form
6	4363/Del/2018	Insta Exibitions Pvt. Ltd. 1308-09,Best Sky Tower, F-5 Netaji Subhasdh Place, Pitampura, New Delhi PAN-AABCI0085P	ACIT(TDS), CPC, Aayakar Bhawan, Sector-3, Vaishali Ghaziabad	2013-14	(Q-2)	24Q
7	4364/Del/2018	Do	Do	2013-14	(Q-3)	24Q
8	4365/Del/2018	Do	Do	2013-14	(Q-4)	24Q

9	4366/Del/2018	Do	Do	2014-15	(Q-1)	24Q
10	4367/Del/2018	Do	Do	2014-15	(Q-2)	24Q
11	4368/Del/2018	Do	Do	2014-15	(Q-3)	24Q
12	4369/Del/2018	Do	Do	2014-15	(Q-4)	24Q
13	4370/Del/2018	Do	Do	2014-15	(Q-3)	26Q
14	4371/Del/2018	Do	Do	2014-15	(Q-4)	26Q
15	4372/Del/2018	Do	Do	2015-16	(Q-1)	26Q
16	4373/Del/2018	Do	Do	2015-16	(Q-2)	26Q
17	4374/Del/2018	Do	Do	2015-16	(Q-3)	26Q
18	4375/Del/2018	Do	Do	2015-16	(Q-4)	26Q
19	4376/Del/2018	Do	Do	2015-16	(Q-1)	24Q
20	4377/Del/2018	Do	Do	2015-16	(Q-2)	24Q
21	4378/Del/2018	Do	Do	2015-16	(Q-3)	24Q
22	4379/Del/2018	Do	Do	2015-16	(Q-4)	24Q

अपीलार्थी की ओर से / Appellant by : Sh. Naresh Lath, C.A.
प्रत्यर्थी की ओर से / Respondent by : Sh. M. Baranwal, Sr.DR

सुनवाई की तारीख/ **Date of Hearing :**	**24.08.2020**	घोषणा की तारीख / **Date of Pronouncement:**	**31.08.2020**

आदेश/ORDER

PER SUSHMA CHOWLA,VP

This bunch of appeals filed by different assessee are against respective orders of CIT(A) relating to different assessment years against respective intimation issued under section 200A(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Bunch of present appeals relating to different assessees were heard together and are being disposed of by this consolidated order, for the sake of convenience as the issue raised in all these appeals is similar.

3. The issue arising in all the appeals before us is against intimation issued under section 200A of the Act and / or order passed under section 154 of the Act in charging late fees payable under section 234E of the Act. The first aspect of the issue raised in the set of appeals is charging of fees payable under section 234E of the Act prior to amendment to section 200A(1)(c) of the Act vide Finance Act, 2015 w.e.f. 01.06.2015, while processing the TDS returns. The assessee has also pointed that the Legislature had inserted clause (c) to section 200A(1) of the Act specifically w.e.f. 01.06.2015 and where there is nothing to suggest that the said amendment was clarificatory or retrospective in nature, hence in respect of TDS statements filed for the period prior to 01.06.2015, late fees charged under section 234E of the Act could not be levied in the intimation issued under section 200A of the Act. The second aspect of the issue raised is against the order of the CIT(A) in holding that where the intimation has been issued by the Assessing Officer before 01.06.2015 , no fee can be charged under section 234E of the Act, but said fee can be charged vide rectification order passed under section 154 of the Act issued after 01.06.2015.

4. The CIT(A) relying on the decision of the Hon'ble Rajasthan High Court in the case of Dunlod Shikshan Sansthan vs UOI in [2015] 63 taxamann.com 243(Raj.) and Hon'ble Gujarat High Court in the case of Rajesh Kourani vs

Union of India [2017] 83 taxmann.com 137 (Guj.) upheld the order of the Assessing Officer.

5. The Ld. Counsel for the assessee pointed out that the present appeals are against the late fees charged under section 234E of the Act for various quarters relating to different assessment years for default in not filing TDS returns in time. He stressed that no fee can be levied under section 234E of the Act for the periods prior to 01.06.2015, when the intimation under section 200A of the Act was issued. The Ld. AR for the assessee stated that the issue stands covered by various decisions of the Delhi Tribunal. He made reference to the ratio laid down in the following decisions:-

I. Udit Jain vs ACIT
ITA No.5380/Del/2017, order dated 29/11/2019.
II. M/s Wits Interior Pvt. Ltd. vs ACIT
ITA No.5321 to 5331/Del/2017, order dated 22/05/2018.
III. M/s Samikaran Learning Private Ltd. vs TDS Officer
ITA No.4050 to 4054/Del/2017, order dated 09/11/2017.

6. The Ld. DR for the Revenue strongly objected to the submissions made by the Ld. AR for the assessee. He fairly admitted that the Delhi Bench of the Tribunal in Udit Jain vs ACIT (Supra) have recently decided the issue vide order dated 29.11.2019, but he stressed that rule of consistency could not be applied. In this regard, he placed reliance on the decision of the jurisdictional High Court in the case of Krishak Bharati Cooperative Ld. Vs DCIT [2012] 23 taxmann.com 265 (Del.). He also placed reliance on written submission relating

to the provisions of section 234E of the Act and 200A of the Act and then took us through para 10.1 onwards to propose that late fee which was payable under section 234E of the Act was to be voluntarily paid by the assessee along with TDS returns. He referred to the provision of section 200A of the Act and pointed out that these were machinery provisions and even in the absence of the provision of section 200A(1)(c) of the Act, which was inserted with effect from 01.06.2015, the charging of late fee under section 234E of the Act was automatic payment to be made by the assessee in default. He also pointed out that the fee charged was not in the form of tax, penalty, etc, for which such machinery provisions were required. On the other hand, the fee so charged was compensatory in nature. The relevant paras 10.1 to 10.3 of the written submissions filed by the DR for the Revenue reads as under:-

> *"10.1. The fee payable u/s 234E is a charging provision and the AO has no discretion at all whereas section 200A is a machinery provision enabling for processing of TDS statements, computation of adjustments, fees and generation of intimation etc. Hon'ble ITAT has not appreciated this obvious difference in its order dt. 29.11.2019, referred supra.*
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> *10.2. As apparent from the heading of the section 200A as well as the Memorandum to the Finance Bill, 2015 which elaborates the rationale for insertion of clause (c) in section 200A(1) in the statute (Para 7 of the written submission) it is absolutely clear that this is merely an enabling section to compute/process the TDS statement. Section 234 E is the charging section requiring voluntary payment of fee by the defaulting deductors as per its sub-section (3) as even in the absence of section 200A of the Act with introduction of section 234E, it was always open for the revenue to charge the fees in terms of section 234 E of the Act from the date of its introduction in the statute i.e. 01.07.2012. It may be noted that section 234E creates an automatic charge on the deductors who have defaulted on this count & who are required to pay the fee u/s 234E voluntarily before delivering such belated TDS/TCS returns /statements in accordance with sub-section (3) of sec. 234E. By*

amendment [introduction of clause 200A(l)(c)] this adjustment was brought within the fold of section 200A of the IT Act so that the fee u/s 234E can be computed at the time of processing & issue of intimation in the event of non-payment of fee before delivering such belated TDS/TCS statements by the defaulting deductors. Any view that inhibits the levy of fees under section 234 E due to the absence of regulatory provision will tantamount to charging section yielding to machinery provision which should not be allowed. This has not been considered by Hon'ble ITAT.

10.3. Section 200A entails the procedure for procedure for processing of TDS returns. Amended section of 200A (1)(c), with effect from 01/06/2015, enables computation of fees chargeable u/s 234E under the purview of 200A. Therefore, if any TDS return is processed after 01/06/2015, then fees chargeable u/s 234E is required to be computed as per section 200A(l)(c) by virtue of the fact that the charging section was already effective since 01/07/2012. Similar will be the scenario if TDS return with default of being delayed is submitted after 01/06/2015 and processing is done thereafter. Since the charging section was already effective on the date of occurrence of default (i.e. the due date filing of TDS return on which TDS return was not filed), any TDS return processed after introduction of clause 200A(1) (c) (i.e. giving effect to computation of fees u/s 234E of the Act) should include computation of fees under section 234E. This also needs consideration by Hon'ble ITAT."

7. The Ld. DR for the Revenue placed reliance on the following decisions:-

I. Rashmikant Kundalia (Bom.) (2015) 54 Taxman.com 200 (Bom).

II. Dunlod Shikshan Sansthan vs UOI in [2015] 63 taxamann.com 243(Raj.)

III. Rajesh Kourani vs Union of India [2017] 83 taxmann.com 137 (Guj.)

IV. Qatalys Software Technologies (P.) Ltd. vs UOI [2020] 115 taxmann.com 345 (Madras)

8. He then referred to the decision of the Karnataka High Court in the case of Fateh Raj Singhvi & Ors. vs UOI [2016] 289 CTR 602(Kar.) in para 10.14 onwards and concluded para 10.15, which reads as under:-

> *"10.15 On perusal of the decisions of various High courts wherein the constitutional validity of provisions of sec. 234E have been upheld, it may be seen that in several cases the period under consideration before Hon'ble High Courts were even the periods prior to 01.06.2015 i.e. the date when clause (c) was inserted to section 200A(1) by the Finance Act, 2015. Having considered the periods prior to 01.06.2015 & having upheld the validity of sec. 234E by Hon'ble High Courts, it can't be said that the controversy, being raised now, has escaped the eyes of Hon'ble High Courts and therefore there can't be any doubt that there is any iota of ambiguity with respect to the period of default for which the fee u/s 234E is chargeable. In view of the same and categorical findings of Hon'ble High Courts, the fee u/s 234E is undoubtedly leviable for the defaults of period in filing TDS/TCS statements/returns, even for the period prior to 01.06.2015 independent to the provisions of Sec.200A(l) of the Act. The same have not been considered by Hon'ble ITAT."*

9. The Ld. AR for the assessee on the other hand stressed that the issue has been considered by the Karnataka High Court in Fateh Raj Singhvi & Ors. vs UOI (supra) which has been taken note of by the Tribunal in the case of Udit Jain vs ACIT (supra) and other appeals decided by benches of Delhi Tribunal.

10. We have heard the rival contention and perused the record. The issue which is arising in the present set of appeals is against the chargeability of late filing fee in terms of section 234E of the Act. The issue which is raised by different assessee before us is whether where the return for the TDS deduction was filed under respective sections of the Act, for the period prior to

01.06.2015 though belatedly, but no late filing fee can be charged under section 234E of the Act. The machinery provisions of charging the said fee as per clause (c) of Section 200A(1) of the Act was inserted by legislature with effect from 01.06.2015. We find that the said issue has been decided by the Hon'ble Karnataka High Court in the case of Fateh Raj Singhvi & Ors. vs UOI (supra) and it is held that section 200A of the Act inserted with effect from 01.06.2015 had prospective effect and was not applicable for different quarters of assessment years prior to 01.06.2015. The Delhi Bench of the Tribunal while deciding the appeals in the case of Udit Jain vs ACIT (supra) had taken note of the issue being decided by the Pune Bench of the Tribunal in Maharashtra Cricket Association, Pune vs DCIT [2016] 74 taxmann.com 6(Pune Trib.), in the case of Medical Superintendent Rural Hospital, DOBI BK vs DCIT [2018] 100 taxmann.com 78 (Pune-Trib.) and decision of the Delhi Bench of Tribunal in Meghna Gupta vs ACIT[2018] 99 taxmann.com 334 (Delhi Trib.). Further, the Delhi Bench of the Tribunal have consistently taken similar view in the case of M/s Samikaran Learning Private Ltd. vs TDS Officer (Supra). The relevant finding of the Tribunal in the case of Udit Jain vs ACIT (Supra), wherein reference is made to the decision of the Karnataka High Court in Fateh Raj Singhvi & Ors. vs UOI (supra) and also the decision of the Hon'ble Gujarat High Court in the case of Rajesh Kourani vs UOI (Supra) is as under:-

> *"9. We have heard the rival contentions and perused the record. The issue which needs to be adjudicated in these appeals is the charging of late filing fee u/s 234E of the Act while issuing the intimation u/s 200A of the Act. The case of the assessee before us is that where the legislature*

has inserted clause (c) to section 200A(1) of the Act w.e.f 01.06.2015, then in respect of the TDS statements which were filed under the respective sections of the Act, for the period prior to 01.06.2015, no late filing fee could be charged u/s 234E of the Act, in the intimation issued u/s 200A of the Act. We find that the said issue has been adjudicated by the Hon'ble Karnataka High Court in Fatehraj Singhvi & Others vs Union of India (supra), which proposition has been applied by the Pune Bench of the Tribunal in Medical Superintendent Rural Hospital, DOBI BK vs DCIT (supra). The Tribunal had also taken note of the decision of Hon'ble Gujarat High Court in Rajesh Kourani vs Union of India (supra) and applying the proposition that where there was difference of opinion between Hon'ble High Courts on a particular issue and in the absence of any decision rendered by the Jurisdictional High Court, then the decision in favour of the assessee needs to be followed as held by Hon'ble Supreme Court in Vegetables Products Ltd. [1973] 88 ITR 192(SC). The relevant findings of the Tribunal are as under:-

> *11. "We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in ITA Nos.560/PN/2016 & 561/PN/2016, 1018/PN/2016 to 1023/PN/2016 in Maharashtra Cricket Association Vs. DCIT (CPC)-TDS, Ghaziabad, relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under:-*
>
> *"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid*

and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."

12. The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education and Research Foundation in ITA Nos.1887 to 1893/PUN/2016 and others relating to assessment years 2013-14 and 2014-15 vide order dated 13.01.2017 and also in Swami Vivekanand Vidyalaya Vs. DCIT(CPC)-TDS (supra) and Medical Superintendant Rural Hospital Vs. ACIT (CPC)-TDS in ITA Nos.2072 & 2073/PUN/2017, order dated 21.12.2017, which has been relied upon by the learned Authorized Representative for the assessee.

13. The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra) had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read as under:-

"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty

under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, 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."

14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.

15. In other words, the Hon'ble High Court of Karnataka explained the position of charging of late filing fees under section 234E of the Act and the mechanism provided for computation of fees and failure for payment of fees under section 200A of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under section 200A of the Act for computation and intimation for payment of late filing fees under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the Hon'ble High Court. In view of said proposition being laid down by the Hon'ble High Court of Karnataka

(supra), there is no merit in observations of CIT(A) that in the present case, where the returns of TDS were filed for each of the quarters after 1st day of June, 2015 and even the order charging late filing fees was passed after June, 2015, then the same are maintainable, since the amendment had come into effect. The CIT(A) has overlooked the fact that notices under section 200A of the Act were issued for computing and charging late filing fees under section 234E of the Act for the period of tax deducted prior to 1st day of June, 2015. The same cannot be charged by issue of notices after 1st day of June, 2015 even where the returns were filed belatedly by the deductor after 1st June, 2015, where it clearly related to the period prior to 01.06.2015.

16. We hold that the issue raised in the present bunch of appeals is identical to the issue raised before the Tribunal in different bunches of appeals and since the amendment to section 200A of the Act was prospective in nature, the Assessing Officer while processing TDS returns / statements for the period prior to 01.06.2015 was not empowered to charge late filing fees under section 234E of the Act, even in cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after June, 2015. Accordingly, we hold that intimation issued by Assessing Officer under section 200A of the Act in all the appeals does not stand and the demand raised by charging late filing fees under section 234E of the Act is not valid and the same is deleted.

17. Before parting, we may also refer to the order of CIT(A) in relying on the decision of Hon'ble High Court of Gujarat in Rajesh Kourani Vs. Union of India (supra). On the other hand, the learned Authorized Representative for the assessee has pointed out that the issue is settled in favour of assessee by the Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra). Since we have already relied on the said ratio laid down by the Hon'ble High Court of Karnataka, the CIT(A) has mis-referred to both decisions of Hon'ble High Court of Karnataka and Hon'ble High Court of Gujarat; but the CIT(A) has failed to take into consideration the settled law that where there is difference of opinion between different High Courts on an issue, then the one in favour of assessee needs to be followed as held by the Hon'ble Supreme Court in CIT Vs. M/s. Vegetable Products Ltd. (supra), in the absence of any decision rendered by the jurisdictional High Court. The Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (2015) 54 taxmann.com 200 (Bom) had decided the constitutional validity of provisions of section 234E of the Act and had held them to be ultra vires but had not decided the second issue of amendment brought to section 200A of the Act w.e.f. 01.06.2015. In view thereof, respectfully following the ratio laid down by the Hon'ble High Court of Karnataka and Pune

Bench of Tribunal in series of cases, we delete the late filing fees charged under section 234E of the Act for the TDS returns for the period prior to 01.06.2015.

18. Further before parting, we may also refer to the order of CIT(A) in the case of Junagade Healthcare Pvt. Ltd., where the CIT(A) had dismissed appeals of assessee being delayed for period of December, 2013 and July, 2014. The CIT(A) while computing delay had taken the date of intimation under section 200A of the Act as the basis, whereas the assessee had filed appeals before CIT(A) against the order passed under section 154 of the Act. The CIT(A) had noted that rectification application was filed in February, 2018 which was rejected by CPC on the same day. The CIT(A) was of the view that there was no merit in condonation of delay, wherein appeals were filed beyond the period prescribed. The assessee had filed appeals against the order passed under section 154 of the Act, hence the time period of appeals filed by assessee before the CIT(A) have to be computed from the date of order passed under section 154 of the Act and not from the date of issue of intimation. Thus, there is no merit in the order of CIT(A) in dismissing the appeals of assessee on this issue.

19. We find similar issue has been decided by us in the case of Medical Superintendent Rural Hospital Vs. ACIT(CPC)-TDS (supra) and vide para 15, order dated 21.12.2017 it was held as under:-

> *"15. Further, before parting, we may also refer to the order of the CIT(A) in these two appeals. The CIT(A) had dismissed the appeals of the assessee being delayed for a period of two and half years. The CIT(A) had taken the date of intimation under section 200A(3) dated 07-08-2014 and computed the delay in filing the appeal late before him. However, the assessee had filed the appeal before the CIT(A) against the order passed under section 154 of the Act. The said application for rectification under section 154 was filed on 08-06-2017/09- 03-2017 in the respective years. The said application was decided by the Assessing Officer on 09-06-2017. The assessee filed an appeal against the dismissal of the rectification application filed under section 154 of the Act. The said fact is clear from the perusal of Form No.35 with special reference to Column 2(a) and 2(b). In the entirety of the above said facts and circumstances, we find no merit in the order of CIT(A) in the case of Medical Superintendent Rural Hospital, Surgana in dismissing the appeal in-limine being filed beyond the period of limitation. We have already decided the issue on merits in favour of assessee."*

20. We have already decided the issue on merits in favour of assessee. Accordingly, the grounds of appeal raised by assessee in all appeals are allowed."

11. Reference is also made to the decision of the Delhi Bench of the Tribunal in Meghna Gupta vs ACIT (Supra), the same reads as under:-

"6. "We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. At the outset, from the perusal of the rectification order u/s 200A generated by TDS (CPC), it is noticed that the TDS in 26QB mentions date of filing of 'challan cum statement' as 5.4.2014, wherein late filing of 'challan cum statement' u/s 234E has been levied. The assessee had purchased the property on 6.12.2013 i.e., relevant to the assessment year 2014-15. Since assessee had purchased the property from eight sellers and the payment to each of the seller has been made separately for an amount of Rs. 41,87,500/- aggregating to Rs. 3,35,00,000/-, the assessee' contention has been that it was not required to deduct TDS, because the payments made to each seller was less than the prescribed limit of Rs.50 lacs and therefore, provision of section 194IA was not applicable. The demand has been raised by the department u/s 200 in terms of failure to comply with Section 200A, which deals with the processing of statement of tax deducted at source u/s 200. First of all, sub section 3 of section 200 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, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A 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;"*

6.1. Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) 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. As stated above, the assessee has duly deposited the tax not at the time of purchase albeit on 5.4.2014 and on the same date, statement has also been filed. 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 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 lordship had 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. 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.
8. Similarly interest u/s 220(2) cannot be levied when fee u/s 234E itself is not leviable. In so far as charging of interest u/s 201(IA), the same cannot be charged as admittedly no order u/s 201(1) has been

passed holding the assessee to be "assessee in default" and, therefore, such an interest is also deleted."

12. We may also refer to the decision of the Pune Bench of the Tribunal in the case of Maharashtra Cricket Association vs DCIT (Supra), wherein reference was made to the reliance placed by the Revenue on the decision of the Hon'ble Bombay High Court in the case of Rashmikant Kundalai vs Union of India (Supra) and it was observed as under:-

"27. While deciding the present bunch of appeals, the Revenue had placed reliance on the ratio laid down by the Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (supra) wherein, the constitutional validity of section 234E of the Act was challenged. The Hon'ble High Court noted the fact that where the deductor was required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date and the delay in furnishing such TDS returns would have cascading effect. It was further observed by the Hon'ble High Court that under the Income-tax Act, where there is an obligation on the Income-tax Department to process the income-tax returns within specified period from the date of filing, the returns could not be accurately processed of such person on whose behalf tax has been deducted i.e. deductee, until information of such deductions is furnished by the deductor within the prescribed time. Since the substantial number of deductors were not filing their TDS returns / statements within prescribed time frame, then it lead to an additional work burden upon the Department due to the fault of the deductor and in this light and to compensate for additional work burden forced upon the Department, fees was sought to be levied under section 234E of the Act. The Hon'ble High Court held that looking at this from this perspective, section 234E of the Act was not punitive in nature but a fee which was a fixed charge for the extra service which the Department had to provide due to the late filing of TDS statements. It was further held by the Hon'ble High Court that late filing of TDS returns / statements was regularized by payment of fees as set out in section 234E of the Act. Therefore, the findings of Hon'ble High Court were thus, that the fees sought to be levied under section 234E of the Act was not in the guise of tax sought to be levied on the deductor. The provisions of section 234E of the Act were held to be not onerous on the ground that section does not empower the Assessing Officer to condone the delay in late filing the income tax returns or that no appeal is provided from arbitrary order passed under section 234E of the Act. The Hon'ble High Court held that the right to appeal was not a matter of

right but was creature of statute and if the Legislature deems fit not to provide remedy of appeal, so be it. The Hon'ble High Court further held that a person can always approach the court in extraordinary equitable jurisdiction under Article 226/227 of the Constitution as the case may be. The Hon'ble High Court therefore, observed that simply because no remedy of appeal was provided for the provisions of section 234E of the Act, the same cannot be said to be onerous and section 234E of the Act was held to be constitutionally valid. The constitutional validity of provisions of section 234E of the Act has also been upheld by the Hon'ble Rajasthan High Court in M/s. Dundlod Shikshan Sansthan & Anr. Vs. Union of India and Ors (supra)."

13. The Tribunal further observed as under:-

"28. In view of the above said ratio laid down by the Hon'ble Bombay High Court, the case of the learned CIT-DR before us was that there is no merit in the present set of appeals filed by the assessee as the Hon'ble High court has laid down that no appeal is provided from an order passed under section 234E of the Act and the same merits to be dismissed at the outset. In this regard, he has raised two issues that (a) the appeal filed by the assessee is not maintainable and also (b) there is no merit in the claim of the assessee that the Assessing Officer is not empowered to charge fees under section 234E of the Act before insertion of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. The learned Authorized Representative for the assessee on the other hand, drew our attention to the Memorandum to the Finance Bill, 2015 while introducing the said clause (c) to section 200A(1) of the Act. The Finance Bill took note of the provisions of Chapter XVIIB, under which the person deducting tax i.e. deductor was required to file quarterly tax deduction at source statement containing the details of deduction of tax made during the quarter by the prescribed due dates. Similar responsibility is on a person required to collect tax of certain specified receipts under section 206C of the Act. In order to provide effective deterrence against the delay in furnishing TDS / TCS statements, the Finance Act, 2012 inserted section 234E of the Act to provide for levy of fees on late furnishing of TDS / TCS statements. The Memo further took note of the fact that the Finance (No.2) Act, 2009 inserted section 200A in the Act, which provided for furnishing of TDS statements for determining the amount payable or refundable to the deductor. It further took note that however, as section 234E of the Act was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. It was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. The Memo explaining the Finance Bill, 2015 very categorically held that currently there does not exist any provision in the

Act to enable the processing of TCS returns and hence, a proposal was made to insert a provision in this regard and also the post provision shall incorporate the mechanism for computation of fees payable under section 234E of the Act. The Finance Bill further refers to the existing provisions of the Act i.e. after processing of TDS statement, intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TDS statement is (i) subject to rectification under section 154 of the Act; (ii) appealable under section 246A of the Act; and (iii) deemed as notice of payment under section 156 of the Act. The Finance Bill further provided that intimation generated after the proposed processing of TCS statement shall be at par with the intimation generated after processing of TDS statement and also provided that failure to pay tax specified in the intimation shall attract levy of interest as per provisions of section 220(2) of the Act. Further, amendments were also made in respect of the scheme of payment of TDS / TCS by the Government, deductor / collector which are not relevant for deciding the issue in the present appeal and hence, the same are not being referred to. The Finance Bill further provided that the amendment would take effect from 01.06.2015.

29. The perusal of Memo explaining the provision relating to insertion of clause (c) to section 200A of the Act clarifies the intention of Legislature in inserting the said provision. The provisions of section 234E of the Act were inserted by the Finance Act, 2012, under which the provision was made for levy of fees for late furnishing TDS / TCS statements. Before insertion of section 234E of the Act, the Finance (No.2) Act, 2009 had inserted section 200A in the Act, under the said section, mechanism was provided for processing of TDS statements for determining the amount payable or refundable to the deductor, under which the provision was also made for charging of interest. However, since the provisions of section 234E of the Act were not on statute when the Finance (No.2) Act, 2009 was passed, no provision was made for determining the fees payable under section 234E of the Act at the time of processing the TDS statements. So, when section 234E of the Act was introduced, it provided that the person was responsible for furnishing the TDS returns / statements within stipulated period and in default, fees would be charged on such person. The said section itself provided that fees shall not exceed the amount of tax deducted at source or collected at source. It was further provided that the person responsible for furnishing the statements shall pay the said amount while furnishing the statements under section 200(3) of the Act. However, power enabling the Assessing Officer to charge / levy the fee under section 234E of the Act while processing the TDS returns / statements filed by a person did not exist when section 234E of the Act was inserted by the Finance Act, 2012. The power to charge fees under the provisions of section 234E of the Act while processing the TDS statements, was dwelled upon by the Legislature by way of insertion of clause (c) to section 200A(1) of the Act by the Finance Act, 2015 w.e.f. 01.06.2015. Accordingly, we hold that where the Assessing Officer has processed the TDS statements filed by the

deductor, which admittedly, were filed belatedly but before insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015, then in such cases, the Assessing Officer is not empowered to charge fees under section 234E of the Act while processing the TDS returns filed by the deductor.

30. The Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (supra) has upheld the constitutional validity of said section introduced by the Finance Act, 2015 w.e.f. 01.06.2015 but was not abreast of the applicability of the said section 234E of the Act by the Assessing Officer while processing TDS statement filed by the deductor prior to 01.06.2015. In such scenario, we find no merit in the plea of learned CIT-DR that the Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (supra) has laid down the proposition that fees under section 234E of the Act is chargeable in the case of present set of appeals, where the Assessing Officer had issued the intimation under section 200A of the Act prior to 01.06.2015."

14. Another aspect of the issue is whether the amendment brought in by the Finance Act, 2015 w.e.f. 01.06.2015 by way of insertion of clause (c) to section 200A(1) of the Act is clarificatory or is prospective in nature and is not applicable to the pending assessments. Undoubtedly, the provisions of section 234E of the Act were inserted by the Finance Act, 2012, under which the liability was imposed upon the deductor in such cases where TDS statements / returns were filed belatedly to pay the fees as per said section. However, in cases, where the assessee has failed to deposit the said fees, then in order to enable the Assessing Officer to collect the said fees chargeable under section 234E of the Act, it is incumbent upon the Legislature to provide mechanism for the Assessing Officer to charge and collect such fees. In the absence of enabling provisions, the Assessing Officer while processing the TDS statements, even if the said statements are belated, is not empowered to charge the fees under section 234E of the Act. The amendment was brought in by the

Finance Act, 2015 w.e.f. 01.06.2015 and such an amendment where empowerment is given to the Assessing Officer to levy or charge the fees cannot be said to be clarificatory in nature and hence, applicable for pending assessments.

15. The Hon'ble Supreme Court in CIT Vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC) has explained the general principle concerning retrospectivity and have held that "of the various rules guiding how a legislation has to be interpreted, one established rule is that unless contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. Idea behind the rule is that current law should govern current activities". The Memo explaining the Finance Bill, 2015 very clearly also recognizes that and refers to the current provisions of sub-section (3) to section 200 of the Act, under which the deductor is to furnish TDS statements. However, as section 234E of the Act was inserted after insertion of section 200A in the Act, the existing provisions of section 200A of the Act did not provide for determination of fees payable under section 234E of the Act at the time of processing of TDS statements. In this regard, it was thus, proposed to amend the provisions of section 200A of the Act so as to enable the computation of fees payable under section 234E of the Act at the time of processing of TDS statements under section 200A of the Act. In other words, the Assessing Officer is empowered to charge fees payable under section 234E of the Act in the intimation issued after insertion of clause (c) to section 200A(1) of the Act w.e.f. 01.06.2015. The

Legislature itself recognized that under the existing provisions of section 200A of the Act i.e. prior to 01.06.2015, the Assessing Officer at the time of processing the TDS statements did not have power to charge fees under section 234E of the Act and in order to cover up that, the amendment was made by way of insertion of clause (c) to section 200A of the Act. In such scenario, it cannot be said that insertion made by section 200A(1)(c) of the Act is retrospective in nature, where the Legislature was aware that the fees could be charged under section 234E of the Act as per Finance Act, 2012 and also the provisions of section 200A of the Act were inserted by Finance (No.2) Act, 2009, under which the machinery was provided for the Assessing Officer to process the TDS statements filed by the assessee. The insertion categorically being made w.e.f. 01.06.2015 lays down that the said amendment is prospective in nature and cannot be applied to processing of TDS returns / statements prior to 01.06.2015.

16. We also find support from the decision of the Hon'ble Karnataka High Court in Writ Appeal Nos.2663-2674/2015(T-IT) & Ors in Sri Fatheraj Singhvi & Ors Vs. Union of India & Ors, wherein the Hon'ble Court had quashed the intimation issued under section 200A of the Act levying the fees for delayed filing of the TDS statements under section 234E of the Act. The Hon'ble High Court notes that the Finance Act, 2015 had made amendments to section 200A of the Act enabling the Assessing Officer to make adjustments while levying fees under section 234E of the Act was applicable w.e.f. 01.06.2015 and has

held that it has prospective effect. Accordingly, the Ho n'ble High Court held that "intimation raising demand prior to 01.06.2015 under section 200A of the Act levying section 234E of the Act late fees is not valid". However, the Hon'ble High Court kept open the issue on constitutional validity of section 234E of the Act. We have already referred to the decision of Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (supra) in this regard, wherein the constitutional validity of section 234E of the Act has been upheld."

17. Accordingly, we hold that where power is being enshrined upon the Assessing Officer to charge late fees while processing the TDS returns w.e.f. 01.06.2015, such provision cannot have retrospective effect as it would be detrimental to the case of tax payer. The provision under which a new enabling power is being given to charge fees under section 234E of the Act while processing TDS returns / statements and such power is to be applied prospectively. In any case, the Parliament itself has recognized its operation to be prospective in nature while introducing clause (c) to section 200A(1) of the Act and hence, cannot be applied retrospectively.

18. We further hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of

charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law.

19. In the result, all appeals of different assesses are allowed.

Order pronounced in the open court on 31st August, 2020.

Sd/-	**Sd/-**
(Dr. B.R.R. Kumar)	**(SUSHMA CHOWLA)**
लेखासदस्य/ ACCOUNTANT MEMBER	**उपाध्यक्ष / VICE PRESIDENT**

दिल्ली / दिनांक Dated : 31st August, 2020
Shekhar, Sr. P.S.
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

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

आदेशानुसार/ BY ORDER,

सहायकरजिस्ट्रार, आयकर अपीलीय अधिकरण , दिल्ली
Assistant Registrar, ITAT, Delhi