IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.9336 to 9341/Del/2019

Assessment Year: 2013-14 & 2014-15

Bathline India (P) Ltd. A-232, Okhla Industrial Area, Phase-I, Tekhand, South East, New Delhi-110020 PAN No.	Vs.	ACIT ï CPC- TDS Vaishali Ghaziabad ï 201010 Uttar Pradesh
(APPELLANT)		**(RESPONDENT)**

Appellant by	Sh. Vivek Aggarwal, CA
Respondent by	Sh. Rakhi Vimal, Sr. DR
Date of Hearing:	28.08.2020
Date of Pronouncement:	31.08.2020

ORDER

PER R.K PANDA, AM:

This batch of six appeals filed by the assessee are directed against the separate orders of the CIT(A)-41, New Delhi dated 26th June, 2019 confirming the levy of late filing fee u/s 234E and interest u/s 220(2) of the IT Act, 1961.

2. At the outset, the ld. Counsel, referring to the order of the CIT(A), submitted that the ld. CIT(A) has dismissed all these appeals by not condoning the delay

which are ranging from 1938 days to 2008 days. Referring to the copy of the order passed u/s 154 by the CPC Cell, he submitted that the order was passed on 11th February, 2019 and against the said order, the assessee had filed the appeal on 2nd March, 2019 which was well within the due date since the date of filing of the appeal before the CIT(A) is 11th March, 2019. Although the ld.CIT(A) has duly taken note of the fact that the appeal has been filed against the order dated 11th February, 2019 as per para 4.2 of his order, but, treated the same as belated on the ground that original order u/s 200A was passed on 11th November, 2013. Thus, the ld.CIT(A) has gone on wrong appreciation of facts and, thereby, dismissed the appeal on account of delay which is not correct. Referring to Form No.35 along with the order passed u/s 54, he submitted that the appeal was filed before the CIT(A) against the order passed u/s 154. However, due to a clerical typographical error, it was inadvertently mentioned as 200A. Therefore, this confusion arose.

3. Referring to the decision of the Hon'ble Delhi High Court in the case of Remfry and Sons vs. CIT, 276 ITR 1, he submitted that the Hon'ble High Court has held that the procedural/technical mistakes should not stand in the way of imparting justice and the authority must allow opportunity to the assessee to rectify mistakes. He submitted that since, on the issue of delay the ld.CIT(A) has neither confronted the same to the assessee nor has appreciated the facts properly,

therefore, the dismissal of the appeal on account of delay being not in accordance with law should be quashed.

4. He submitted that the ld.CIT(A) has also decided the issue on merit and has simply held that since the AO has levied late filing fee u/s 234E only after 01.06.2015 which was subsequently corrected on 6th February, 2019, the claim of the assessee for the exemption from levy of late filing fee is liable to be dismissed.

5. Referring to the decision of the Delhi Bench of the Tribunal in the case of Udit Jain vs. ACIT, vide ITA No.5380/Del/2017 and batch of other appeals, order dated 29.11.2019, he submitted that the Tribunal has thoroughly discussed the issue and held that when the period of default was before 01.06.2015, there is no merit in charging late filing fee u/s 234E of the Act. Referring to various other decisions of the coordinate Benches of the Tribunal, he submitted that the Tribunal has taken the view that levy of fee u/s 234E cannot be levied on such kind of default before 01.06.2015. He accordingly submitted that all these appeals filed by the assessee should be allowed and the levy of fee u/s 234E by the AO which has been sustained by the CIT(A) should be deleted.

6. The ld. DR, on the other hand, strongly supported the order of the CIT(A). She submitted that the common issue in all these appeals under consideration is levy of fees u/s 234E of the Act. She submitted that the contention of the assessee

that fee u/s 234E is not leviable before 01.06.2015, i.e., the date when clause (c) was inserted in section 200A(1) for the computation of the said fees at the time of processing is not correct. She submitted that the decisions of the Tribunal relied on by the ld. Counsel are not applicable since the facts are largely distinguishable. The Tribunal has not appreciated the rationale of the amendments brought in the form of insertion of section 234E by the Finance Act, 2012 and insertion of clause (c) to Sec. 200A(1) of the I.T. Act by Finance Act 2015 as well as the decisions of various High Courts including jurisdictional High Court. The rationale behind such amendments & explanatory notes are available in the respective Memorandum to the corresponding Finance Bill which have not been considered by Hon'ble ITAT in its order dt.29.11.2019. She drew the attention of the Bench to the relevant provisions of I.T. Act viz. Sec.234E, Sec.200A(l), 271H, Memorandum to Finance Bill, 2012, Memorandum to Finance Bill'2015 alongwith host of case-laws decided in favour of Revenue. She submitted that the premise /foundation of the decision of Hon'ble Karnataka High Court has also been analysed and is distinguishable in view of the case-laws referred to. Accordingly she urged that the above decision dated. 29.11.2019 should not be followed in the name of rule of consistency in the case of above mentioned appeals as also res- judicata is not applicable in income-tax proceedings.

7. As regards ôRule of consistencyô is concerned, she placed reliance on the decision of jurisdictional High Court in the case of Krishak Bharati Cooperative Ltd vs DC1T [2012] 23 taxmann.com 265 (Delhi) wherein Hon'ble Delhi HC considered the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang vs CIT (1992] 60 taxman 248(SC) and has held that the rule of consistency should not create anomaly. She also relied on the following decisions:-

(i) Rohitasava Chand [2008] 306 ITR 242 (Delhi)

(ii) Anup Sharma vs Addl CIT, ITA No.l61/CHD/2012, order clt.26.08.2014 of ITAT, Chandigarh

(iii) Meeraj Estate & Developers vs DCIT [2014] 44 taxraann.com 431 (ITAT, Agra)

(iv) K K Khullar vs DCIT [2009] 116 ITD 301(Delhi)

(v) Dwarkadas Kesardeo Morarka vs CIT [1962] 44 ITR 529 (SC)

8. The ld. DR drew the attention of the Bench to the Memorandum to the Finance Bill, 2012 which elaborates the rationale / explanatory notes with respect to amendments being brought in the provisions of the L T. Act. The rationale for such amendments in TDS/TCS related provisions have been provided under the heading ñE. Rationalization of Tax Deduction at Source (TDS) and Tax Collection

at Source (TCS) Provisions ò which comprise of 6 paras. Para (III) relates to insertion of section 234E in the statute & relevant to the issue under consideration.

9. She further drew the attention of the Bench to the Memorandum to the Finance Bill, 2015 which elaborates the rationale for insertion of clause (c) in section 200A(I) in the statute. Para (I) & para (III) under the heading ñL Rationalization of Measures ò which are relevant to the issue.

10. She also drew the attention of the Bench to the provisions of Section 271H of the Act which was simultaneously inserted with the provisions of section 234E w.e.f. 01.07.2012 by the Finance Act, 2012. She submitted that the applicability & interpretation of the provisions of sec. 271H have been discussed by various High Courts in its order while examining the validity of provisions of Sec. 271 H.

11. The ld. DR submitted that in a number of cases, various High Courts have upheld the validity of provisions of section 234E which provides for imposition of fee for delayed filing of statement of TDS. Honôble High Courts have categorically held that the provisions are not ultra vires and not violative of constitution. The issue of chargeability of fee u/s 234E for the period of delay in filing of TDS return/statement before 01.06.2015 i.e. insertion of caluse (c) to section 200A have also been examined by various High Courts and have upheld the chargeability of fee u/s 234E and the assesseeôs appeal have been dismissed. In particular, the

decisions of Hon'ble Gujarat High Court, Madras High Court & Rajasthan High Court may kindly be referred to. In several cases the period under consideration before Hon'ble High Courts included the period prior to 01.06.2015. The ld. DR relied on the following decisions:-

(i) Rajesh Kourani vs. UOI [2017] 83 taxmann.com 137 (Gujarat)

(ii) Biswajit Das vs. UOI, [2019] 103 taxmann.com 290 (Delhi)]

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

(iv) Dunlod Shikshan Sansthan vs. UOI [2015] 63 taxmann.com 243 (Raj)]

(v) Rashmikant Kundalia vs. UOI [2015] 54 taxmann.com 200 (Bombay)

(vi) Lakshminirman Bangalore Pvt. Ltd. vs. DCIT [2015] 60 taxmann.com 144 (Karnataka)

(vii) Sree Narayana Guru Smaraka Sangam Upper Primary School vs. UOI [2017] 77 taxmaim.com 244 (Kerala)

(viii) Dr. Amrit Lai Mangal vs. UOI [2015] 62 taxmami.com 310 (P& H)

12. The ld. DR submitted that a harmonious and conjoint reading of provisions of section 234E & Memorandum to Finance Bill, 2012, Section 271H, section 200

A(l)(c), Memorandum to Finance Bill 2015 and the case-laws on this issue makes following points unambiguously clear that:

a) 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.

b) 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 it is absolutely clear that this is merely an enabling section to compute/process the TDS Statement. Section 234 E is the charging section imposing liability of 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 234.E creates an automatic charge on the deductors who have defaulted on this count & who are required to pay the fee u/s 234E 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.

c). Section 200A entails the procedure for procedure for processing of TDS returns. Amended section of 200A (l)(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(l)(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.

d). Section 200A speaks about the processing of TDS return/statements and thus the provisions starts only after the filing of such TDS returns/statements, whether in time or delayed, whereas section 234E seeks to levy the fees for the period of delay in filing such TDS returns and statements. Therefore, it may be seen that the charging provisions of section 234E precedes the operation of the machinery provisions of section 200A. Hon'ble ITAT has not appreciated this obvious difference in its order dt. 29.11.2019, referred supra.

e). The fee payable u/s 243E is compensatory in nature to the department for the services provided for regularization of the delay in filing of a TDS return/statement & is not penal in nature since the Income Tax Department has to expend extra effort & resources for processing delayed TDS returns or statements and also the additional burden of interest to be paid on refunds payable to the assessee on whose account tax deduction has been made. [As held in para 27 by Hon'ble Delhi High Court in the case of Biswajit Das vs. UOI, [2019] 103 taxmann.com 290 (Delhi)] that the fee imposed u/s 234E of the Act is for all intents & purposes a 'late fee' payable for accepting TDS

statement/return at belated point of time. This fact has not been considered by Hon'ble ITAT in its order dt.29.11.2019.

f). Section 271H of the Act does not provide for any penalty for delayed filing of TDS return/statement if a person proves that he has paid the TDS amount and also filed TDS statements along with fee and interest before expiry of a period of 1 year from the prescribed time. However, the delay in filing of TDS return/statement upto a period of 1 year from the prescribed time is subject to levy of fee u/s 234E. The penalty leviable u/s 271H of the Act is not automatic whereas the fees leviable u/s 234E is mandatory and the AO has no discretion. These are two independent provisions and the findings of Hon'ble High Courts in this regard may kindly be referred to. The same have not been considered by Hon'ble ITAT.

g) Before the insertion of Clause (c) to section 200A(1), section 200A did not provide for computation of fee payable u/s 234E of the Act at the time of processing of TDS statements though the same was mandatorily leviable for the delay in filing of TDS statements. In this sense, insertion of Clause (c) to section 200A(1), is only an addendum to the section to provide for the machinery provision to compute the fee payable u/s 234E at the time of processing of TDS statement and the same is enabling for processes in

nature. This is very much evident on perusal of the Memorandum to the Finance Bill 2015. The same have not been considered by Hon'ble ITAT.

13. The ld. DR submitted that as per various judicial decisions the ratio is that the legislations which modified accrued rights or imposed disabilities were to be treated as prospective in nature unless they were accounting for an obvious omission, or explaining a former legislation. In the present case, section 200(3) provides for statutory liability for depositing the TDS and furnishing the requisite statement with in due time (the said provision inserted by Finance Act 2004 w.e.f. 01/04/2005). Section 234 E which provides for levy of fees if assessee is in violation of 200(3) or 206C(3) of the Act, is inserted by F.A.2012 w.e.f. 01/07/2012 .Therefore, since both the substantive legislation (section imposing statutory liability as well as the charging section for levy of fees in case of violation of statutory liability) were in effect much earlier from the date of insertion of 200A(3) which is merely a mechanical provision providing for computation, such amendment in procedural section should be considered as clarificatory in nature. The same have not been considered by Hon'ble ITAT.

14. She submitted that in the case of Rajesh Kourani, Hon'ble Gujarat High Court has considered the chargeability of fee u/s 234E before 01.06.2015 when clause (c) was inserted to section 200A(1) by the Finance Act, 2015. Hon'ble High Court also considered the decision of Hon'ble Karnataka High Court in the case of

Fatehraj Singhvi & Others. The issue has been discussed in great detail in para 16 to 21 and Hon'ble High Court has upheld the levy of fee u/s 234E since the day the provisions of section 234E was brought to statute and even prior to 01.06.2015 when section 200A(1) was amended to include clause (c). Hon'ble High Court has held that section 200A of the Act is a machinery provision providing mechanism for processing a statement of IDS and for making adjustments whereas section 234E is a charging provision creating a charge for levying fee for certain defaults in filing the statements. W.e.f 01.06.2015 the provision of section 200A specifically provides for computing the fee payable u/s 234E. On this issue, specific reference may kindly be made to para 18, 19 & 20 of the order where specific findings of Hon'ble High Court are recorded. The categorical findings of Hon'ble Gujarat High Court, though considered by Hon'ble ITAT in its order dt 29.11.2019, has not been appreciated by Hon'ble Tribunal in right perspective when read in conjunction with the provisions, explanatory notes and orders of various other High Courts wherein the validity of provisions of sec.234E has been upheld.

15. She submitted that the issue of legality of intimations / orders passed u/s 200A levying fee u/s 234E for late filing of TDS/TCS returns / statements, prior to the amendments made by Finance Act'2015 w.e.f. 01.06.2015, was considered by Hon'ble Rajasthan High Court also in the case of Dunlod Shikshan Sansthan vs.

UOI reported in [2015] 63 taxmann.com 243 (Raj)]. Para-8 of the order is relevant & the same is reproduced as under :-

> ñ8. In the present case, the fee was levied under section 200for late filing of the returns, prior to the amendments made by the Finance Act, 2015 with effect from 1.6.2015 in Sections 200A, 246A and 272A providing for computation and appeal. We do not find that even prior to these amendments the imposition of fee was illegal. We do not in exercise of the power under Article 226 of the Constitution of India find any valid reasons or jurisdiction to interfere with the compensatory fees imposed for late filing of the TDS returns on flat rates. The absence of any provision for condonation of delay and the appeal prior to amendments also did not make the imposition of late fees by Section 234 E to be ultra vires.ò

16. The findings of Hon'ble Rajasthan High Court has also escaped the consideration by Hon'ble ITAT. She accordingly requested that the same may kindly be considered to avoid any miscarriage of justice.

1. Block Development Officer Vs. ACIT date of order 19.06.2010.
2. Secondary School Principal Vs. ACIT CPC- TDS (ITAT Jaipur) ITA No.964/JP/2019 Date of order 24.06.2020

17. The ld. DR submitted that on a perusal of the order it may be noted that Hon'ble Karnataka High Court set-aside the order levying the fee u/s 234E holding that the amendments in sec 200A, wherein the clause (c) was inserted, can't have any retrospective application. However, two important points can be noted in the order. First Hon'ble Court didn't gave any such findings which can be said to have negated the mandatory charging of fees u/s 234E for late filing of TDS/TCS

returns / statements which creates an automatic charge on the deductors who have defaulted on this count & who are required to voluntarily pay the fee u/s 234E before delivering such belated TDS/TCS returns /statements in accordance with sub-section (3) of sec. 234E. Second, Hon'ble Karnataka High Court left the question of constitutional validity of sec.234E open for consideration by the Division Bench [Para-26 of the order] which was earlier decided by Single Member Bench of the High Court upholding the validity of sec. 234E in the case of Lakshminirman Bangalore Pvt. Ltd. vs. DCIT [cited supra]. It is reiterated at the cost of repetition that the issue of constitutional validity of sec. 234E has been upheld by various High Courts including the jurisdictional High Court of Delhi and Punjab & Haryana High Court. Relevant case-laws have been mentioned above. The decision of Hon'ble Delhi High Court Biswajit Das vs. UOI, [cited supra] is subsequent to the date of order of Hon'ble Karnataka High Court in the case Fatehraj Singhvi and accordingly, the decision of in the case Fatehraj Singhvi which has been relied upon by Hon'ble ITAT in its order dt.29.11.2019, does not hold ground for consideration.

18. 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.

19. The ld. DR accordingly submitted that in view of the extant provisions, case laws referred to above and the discussions supra, the appeals of the assessee's be dismissed on merit. It is also submitted that this written submissions may kindly be incorporated & reproduced in the order for kind reference.

20. The ld. Counsel for the assessee in his rejoinder submitted that it is true that the Hon'ble Gujarat High Court has taken a contrary view. However, there is no decision of this jurisdictional High Court on this issue. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Vegetable Products Ltd., reported in 88 ITR 192, where it has been held that when there are conflicting decisions, the decision in favour of the assessee should be followed, the decision of

the Hon'ble Karnataka High Court should be followed and the grounds raised by the assessee should be allowed.

21. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case has basically challenged the levy of late fee u/s 234E by the AO which has been upheld by the CIT(A) and who has also dismissed these appeals on account of delay in filing.

22. So far as the delay in filing of the appeals before the CIT(A) is concerned, a perusal of the Form No.35 filed along with copy of order passed u/s 154 by the CPC shows that the date of order u/s 200A was 11.11.2013 and the assessee filed the rectification application before the CPC and the order u/s 154 was passed on 11.02.2019. The assessee has filed the appeal against the order passed u/s 154 on 02.03.2019 which is well within the time. Even the ld.CIT(A) at para 4.2 of his order has also mentioned that the assessee has filed the appeal against the correction dated 11.02.2019. However, the ld.CIT(A), without considering the facts properly, has held that there is inordinate delay in filing of the appeals before him and the assessee failed to submit explanation so as to justify the above delay for which he dismissed the appeals on account of delay in filing these appeals. In our opinion, there is no delay in the instant case and all these confusion arose

because of some typographical error in the Form 35 where the assessee, instead of mentioning section 154, mentioned section 200A against the section and sub-section of the Income-tax Act, 1961. We, therefore, find merit in the argument of the ld. Counsel that there is no delay in filing of the above appeals.

23. Further, the Hon'ble Delhi High Court in the case of Remfry and Sons (supra) has held that procedural/technical mistakes could not stand in the way of imparting justice and the authority must allow opportunity to the assessee to rectify mistakes. Since, in the instant case, there was merely a technical mistake in wrong mentioning of the provision, therefore, we are of the considered opinion that this technical mistake should not stand in the way of imparting justice and, therefore, the order of the CIT(A) holding that there is delay in filing of these appeals is not correct. Accordingly, we hold that the assessee has filed the appeals well in time and there is no delay. The order of the CIT(A) on this issue is accordingly dismissed.

24. A perusal of the order of the CIT(A) shows that all these TDS statements were filed before 01.06.2015. Therefore, the question that has to be considered is as to whether the CIT(A) was justified in confirming the levy of late fee u/s 234E for delay in filing of the TDS statements and interest u/s 220(2) of the IT Act, 1961. We find, identical issue had come up before the coordinate Bench of the Tribunal in the case of Udit Jain (supra). The Tribunal, after considering the

decision of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi vs. UOI as well as the decision of the Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. UOI reported in (2017) 83 taxmann.com 137, has decided the issue in favour of the assessee by observing 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:-
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> > *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."

10. The Delhi Bench of Tribunal in Meghna Gupta vs ACIT (supra) has also laid down similar proposition and held 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."

11. Now coming to the facts of the present case before us, the assessee, Udit Jain had deducted tax at source u/s 195 of the Act against purchase of property. The tax was deducted at 18.05.2015 and was even paid on 18.05.2015, though the return in Form No.27A was filed on 23.06.2016. We hold that since the period under consideration is first quarter of Financial Year 2015-16 i.e. prior to the amendment to section 200A(1) of the Act wherein clause (c) was inserted w.e.f. 01.06.2015 and since the assessee had already deposited the tax deducted at source, on the same day of deduction, there was reasonable cause in the hands of the assessee in not depositing the return in Form No.27A and the said default needs to be condoned. Even otherwise, following the ratio laid down in the decisions rendered to in the paras above, the Jurisdictional issue of exercise of power by the Assessing Officer in charging late filing fee u/s 234E of the Act, suffers from infirmity as clause (c) to section 200(A)(1) of the Act has been made applicable specifically from the date from 01.06.2015. Since the period of default was before the said date i.e. 01.06.2015, there is no merit in charging late filing fee u/s 234E of the Act. As we hold that no late filing fee is to be charged, then consequent interest charged u/s 220(2) of the Act also do not survive.ò

25. We find, the Delhi Bench of the Tribunal in the following decisions also have held that no fee can be levied u/s 234E in terms of section 200A where the date of filing of TDS statement and date of intimation are much prior to 01.06.2015:-

i) Prakash Industries Ltd. vs. DCIT, ITA Nos.5865 to 5869/Del/2016, order dated 29.07.2019;

ii) M/s Ajvin Infotech Pvt. Ltd. vs. DCIT, ITA No.2305 & 2306/Del/2017, order dated 04.03.2020;

iii) M/s D.D. Motors, Haryana vs. DCIT, ITA NO.956/Del/2017, order dated 18.10.2019; and

iv) District Health & Welfare Society vs. ITO, ITA No.7473/Del/2018, order dated 26.04.2019.

26. So far as the various decisions relied on by Ld. DR are concerned, we have carefully gone through all those decisions and are of the opinion that these can be divided broadly into three categories i.e.

a) Provisions of section 234 E are constitutionally valid
b) Rule of consistency is not applicable and
c) Late of fee u/s. 234 E is leviable for defaults of period in filing the TDS/ TCS statements/ returns even for the period prior to 01-06-2015

27. So far as the argument of the Ld. DR on the basis of various decisions including the decision of Hon'ble Delhi High Court in the case of Biswajit Das (supra) that provisions of section 234E are constitutionally valid is concerned, no

doubt the provisions of section 234 E have been held to be constitutionally valid which is not the dispute before us. So far as the argument of Ld. DR on rule of consistency is concerned, the same in our opinion is not absolute but in the present case we are faced with a situation which has been considered by our coordinate benches and there is no subsequent development to depart there from. Moreover, our coordinate Benches have followed one approach in view of conflicting decision of different High Courts in the absence of any decision of the Jurisdictional High Court. So far as the levy of fee u/s. 234E for defaults of period in filing TDS/TCS statements / returns even for the period prior to 1.06.2015 is concerned, as mentioned earlier there are conflicting decisions by different High Courts and there is no decision on this issue by the jurisdictional High Court. While Hon'ble Karnataka High Court is in favour of the assessee holding that the amendments brought in statute w.e.f. 01.06.2015 are prospective in nature and hence notices issued u/s 200 A of the Act for computation and intimation in payment of late filing fee u/s 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable, the Hon'ble Gujarat High Court has decided the issue against the assessee and in favour of the revenue. After considering the above conflicting decisions, the coordinate benches of the Tribunal are taking the view that when there are conflicting decisions, the decision in favour of the assessee should be followed in the light of decision of Hon'ble

Supreme Court in the case of Vegetables Products Limited (supra). In the light of the above discussion we hold that the CIT(A) is not justified in confirming the late fee levied by the AO u/s. 200 A r.w.s. 234 E since the defaults are prior to 1.06.2015. Accordingly we set aside the order of the Ld. CIT(A) and the fee levied u/s. 234 E and interest there on u/s. 220 (2) is directed to be deleted.

28. In the result, all the appeals filed by the assessees are allowed.

The decision was pronounced in the open court on 31.08.2020.

Sd/-	Sd/-
(SUDHANSHU SRIVASTAVA) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 31st August, 2020
Neha
Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi