IN THE INCOME TAX APPELLATE TRIBUNAL
"A'' BENCH: BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA Nos.2080, 2081 & 2082/Bang/2019
Assessment Year: 2013-14, 2014-15 & 2015-16

M/s. Global Finsol Private Limited 4-A, Ayyappa Arcade, Pampa Extention, Kempapura, Hebbal, Bangalore **PAN NO : AACCT4782B**	**Vs.**	Asst. Commissioner of Income-tax CPC, TDS Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri B. Chattaraj, A.R.
Respondent by	**:**	Shri S. Sundar Rajan, D.R.

Date of Hearing	**:**	10.09.2020
Date of Pronouncement	**:**	10.09.2020

O R D E R

PER BENCH:

All these three appeals filed by the assessee are directed against the orders passed by Ld CIT(A)-9, Bangalore and they relate to the assessment years 2013-14, 2014-15 and 2015-16. In all these appeals, the assessee is assailing the decision of Ld CIT(A) in confirming the demand raised for payment of late filing fee u/s 234E of the Act.

2. The facts, as culled out from the record, are that the assessee has filed quarterly statement of TDS initially for these three assessment years under various sections. Subsequently, the assessee filed revised statement of TDS for these years. The relevant details are summarised below:-

Assessment year	Date of filing of Statement of TDS initially	Date of filing of Revised Statement
2013-14	20-04-2013; 13.7.2013 and 17.7.2013	24.7.2018
2014-15	02-8-2014; 22.12.2014	24.7.2018; 25.7.2018
2015-16	04-9-2015; 01-12-2015; 24.06.2015	24.7.2018

It is not clear as to whether the Statement of TDS filed initially was processed or not. However, while processing the revised statements of TDS, the fee u/s 234E of the Act, the demand was raised towards Fee payable u/s 234E of the Act, since the Ld CIT(A) observes the demand was raised only in revised Statement of TDS. The assessee challenged the same by filing appeals before Ld CIT(A).

3. Before Ld CIT(A), the assessee submitted that the enabling provision for levying fee u/s 234E of the Act while processing the Statement of TDS was inserted in sec. 200A of the Act with effect from 1.6.2015. It was submitted that the Hon'ble Karnataka High Court has held in the case of Fatheraj Singhvi (2016)(73 taxmann.com 252) (289 CTR 602) has held that the amendment made in sec. 200A of the Act by inserting the enabling provision with effect from 1.6.2015 is prospective in nature. Accordingly, it was contended that the demand raised u/s 234E of the Act for the years under consideration is not valid.

4. The Ld CIT(A) did not agree with the contentions of the assessee. He noticed that the revised statements of TDS have been filed after 1.6.2015 and the fee u/s 234E of the Act was levied while processing the above said revised Statement of TDS only. Accordingly he held that the assessee cannot take support of the decision rendered by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra). Accordingly he dismissed the appeals of the assessee. Hence these appeals came to be filed by the assessee.

5. We heard the parties and perused the record. We notice that the issue before us if fully covered in favour of the assessee by the decision rendered by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra). For the sake of convenience, we extract below the relevant observations made by Hon'ble Karnataka High Court in the above said case: -

> **"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.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the

respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent."

It can be noticed that the Hon'ble Karnataka High Court has held that 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.** Admittedly, the assessment years under consideration are AY 2013-14 to 2015-16 pertaining to the financial years 2012-13 to 2014-15. The quarterly periods falling under these assessment years pertain to the period prior to 1.6.2015. Accordingly, as per the binding decision of Hon'ble Karnataka High Court, the demand u/s 234E could not be made in exercise of powers conferred u/s 200A of the Act.

6. In view of the foregoing discussions, we are of the view that the impugned orders passed by Ld CIT(A) cannot be sustained. Accordingly, we set aside the impugned orders passed by Ld CIT(A) and direct the AO to delete the demand raised u/s 234E of the Act in all the three years under consideration.

7. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 10th Sept, 2020

Sd/-	**Sd/-**
(George George K.)	**(B.R. Baskaran)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 10th Sept, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.