

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

Sl. No.	ITA / CO No.	A.Y.	PERIOD	AMOUNT
1.	2661/Bang/2019	2013-14	Q2 FORM 24Q	Rs.32,200
2.	2662/Bang/2019	2014-15	Q1 FORM 24Q	Rs.19,800
3.	2663/Bang/2019	2015-16	Q1-4 FORM 24&26Q4	Rs.2,15,956
4.	2664/Bang/2019	2016-17	Q1 FORM 24Q	Rs.64,409
5.	240/Bang/2020	2013-14	Q3 FORM24Q	Rs.21000
6.	241/Bang/2020	2013-14	Q4 FORM24Q	Rs.13,800
7.	242/Bang/2020	2013-14	Q2 FORM26Q	Rs.32,200
8.	243/Bang/2020	2013-14	Q3 FORM26Q	Rs.10,624
9.	244/Bang/2020	2013-14	Q4 FORM26Q	Rs.13,800
10.	245/Bang/2020	2013-14	Q4 FORM27Q	Rs.13,800
11.	246/Bang/2020	2014-15	Q2 FORM24Q	Rs.9,800
12.	247/Bang/2020	2014-15	Q3 FORM24Q	Rs.12,400
13.	248/Bang/2020	2014-15	Q1 FORM26Q	Rs.1135
14.	249/Bang/2020	2014-15	Q2 FORM26Q	Rs.9,439
15.	250/Bang/2020	2014-15	Q3 FORM26Q	Rs.12,400
16.	251/Bang/2020	2015-16	Q2	Rs.64,800

		FORM24Q
17.	252/Bang/2020	2015-16 Q3 Rs.46,400 FORM24Q
18.	253/Bang/2020	2015-16 Q4 Rs.22,400 FORM24Q
19.	254/Bang/2020	2015-16 Q4 Rs. 7036 FORM26Q

M/s. IIHT Technologies Private Limited, No.63, 1 st Floor, Infantry Road, Bengaluru – 560 001. PAN: AACCI 0957M TAN: BLR104856F	Vs.	The Assistant Commissioner of Income Tax, Centralised Processing Cell- TDS TDS CPC, Aayakar Bhawan, Sector-3, Vaishali, Ghaziabad, Uttra Pradesh- 201010
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Smt.R.Premi, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10-09-2020
Date of Pronouncement	:	10-09-2020

ORDER

Per Bench

These are a batch of 19 appeals filed by Assessee against different orders all dated 30.10.2019 of CIT(Appeals)-9, Bangalore relating to assessment years 2013-14 to 2016-17.

2. The assessee filed statement of tax deducted at source (TDS) for various quarters in Form No.24Q/26Q/27Q for FY 2012-13 to 2015-16 (AY 2013-14 to 2016-17). The statement was processed by the respondent. There was a delay in filing the above TDS statement and therefore the AO by intimation u/s. 200A of the Income-Tax Act, 1961 [“the Act”] levied late fee u/s. 234E of the Income-Tax Act, 1961 [“the Act”]. Under Sec.234E of the Act, if there is a delay in filing statement of TDS within the prescribed

time then the person responsible for making payment and filing return of TDS is liable to pay by way of fee a sum of Rs.200/- per day during which the failure continues. Section 234E of the Act inserted by the Finance Act, 2012 w.e.f. 1.7.2012. reads as follows:-

“Fee for default in furnishing statements.

234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.”

3. Aggrieved by the aforesaid orders, the assessee filed appeals before the CIT(A). The assessee’s contention before CIT(A) was that the provisions of section 234E of the Act was inserted by the Finance Act, 2012 w.e.f. 1.7.2012. Section 200A of the Act is a provision which deals with how a return of TDS filed u/s.200(3) of the Act has to be processed and it reads as follows:-

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

- (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
- (c) the fee, if any, shall be computed in accordance with the provisions of section 234E;
- (d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;
- (e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and
- (f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.— For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.”

4. Clause (c) to (f) of section 200A(1) was substituted by the Finance Act, 2015 w.e.f. 1.6.2015. The assessee contended that AO could levy fee u/s.234E of the Act

while processing a return of TDS filed u/s.200(3) of the Act only by virtue of the provisions of Sec.200A(1)(c), (d) & (f) of the Act and those provisions came into force only from 1.6.2015 and therefore the authority issuing intimation u/s. 200A of the Act while processing return of TDS filed u/s.200(3) of the Act, could not levy fee u/s. 234E of the Act in respect of statement of TDS filed prior to 1.6.2015. The assessee, thus, challenged the validity of charging of fee u/s. 234E of the Act. The assessee relied on the decision of the Hon'ble High Court of Karnataka in the case of *Fatehraj Singhvi v. UOI [2016] 73 taxmann.com 252* wherein the Hon'ble Karnataka High Court held that amendment made u/s. 200A providing that fee u/s. 234E of the Act could be computed at the time of processing of return and issue of intimation has come into effect only from 1.6.2015 and had only prospective effect and therefore, no computation of fee u/s.234E of the Act for delayed filing of return of TDS while processing a return of TDS u/s.234E of the Act could have been made for tax deducted at source for the assessment years prior to 1.6.2015.

5. The CIT(Appeals) found that the appeals were filed by the Assessee on 5.3.2019 and were filed belated and there was application for condonation of delay in filing the appeals. The Assessee claimed before CIT(A) that the controversy regarding levy of interest u/s.234-E of the Act was not clear and clarity emerged only after the decision of the Hon'ble High Court of Karnataka in the case of *Fatheraj Singhvi (supra)* and that the Assessee's business was facing financial strain and hence lost track of the case. The CIT(A) found that there was inordinate delay in filing the appeals and those details have been set out in the order of CIT(A) for each of the appeals set out in the cause title of this order.

6. The CIT(A) refused to condone the delay in filing appeals and dismissed all the appeals (except appeals for AY 2015-16 & 2016-17) observing that the Assessee has not brought sufficient cause for delay. As far as appeals for AY 2015-16 & 2016-17 is concerned, the CIT(A) noticed that there was a delay in filing appeals for these years also

and refused to condone the delay in filing the appeals. The CIT(A) did not stop with this he further went on to hold that the TDS statements were filed by the Assessee for these AYs after 1.6.2015 and after 1.6.2015 the law was amended and the defect pointed out by the Hon'ble Karnataka High Court in the case of Fateeraj Singhvi (supra) did not exist and the levy was valid. It has to be clarified here that though the statements of TDS were filed after 1.6.2015, they related to period prior to 1.6.2015 and the ratio laid down in the decision of Hon'ble Karnataka High Court in the case of Fateeraj Singhvi (supra) will apply. The decision of CIT(A) to the contrary is not correct.

9. None appeared for the Assessee. The learned DR reiterated the stand of the revenue as reflected in the order of the CIT(A).

10. We have considered the submissions of the learned DR and also the grounds of appeal filed by the Assessee. It is not in dispute that if the ratio laid down by the Hon'ble Karnataka High Court in the case of *Fateeraj Singhvi (supra)* is applied then the levy of interest u/s.234-E of the Act would be illegal for returns of TDS in respect of the period prior to 1.6.2015. The present appeals of the Assessee relate to TDS returns filed prior to 1.6.2015. The decision of the Hon'ble Karnataka High Court in the case of *Fateeraj Singhvi (supra)* was rendered on 26.8.2016. It has been held by the ITAT Hyderabad Bench in the case of MSV IT Solutions Ltd. Vs. ITO, Ward 16(4) ITA Nos. 177 & 178/Hyd/2018 order dated 26.10.2018 wherein on identical facts noticing that there was no legal remedy prior to 1.6.2015 against an intimation u/s.200A of the Act, the Hyderabad Bench condoned delay in filing appeal before CIT(A).

11. Considering the peculiar facts and circumstances of the case and keeping in mind that technicalities should not stand in the way of rendering substantive justice, we are of the view that interest of justice would be met if the delay in filing appeals by the Assessee before CIT(A) is condoned and the issue with regard to levy of interest u/s.234-E of the Act be remanded to the CIT(A) for fresh consideration in accordance with the observations made in this order. We hold and direct accordingly.

12. In the result, all the appeals by the assesseees are treated as allowed for statistical purpose.

Pronounced in the open court on this 10th day of September, 2020.

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 10th September, 2020.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.