

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER
AND SHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA No.1235/Bang/2019
Assessment year : 2016-17

Shri. Sandeep Samantha, D.No.2-1-7/7, Shop No.2, Manasa Residency, Chilimbi, Urwa, Mangaluru – 575 006. PAN : AXLPS 5874 J	Vs.	The Additional Commissioner of Income-tax, CPC- TDS, Ghaziabad.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Srinivas Kamath, CA
Revenue by	:	Dr. Shankar Prasad, Add. CIT (DR)(ITAT), Bengaluru
Date of hearing	:	17.09.2020
Date of Pronouncement	:	25.09.2020

ORDER

Per A. K. Garodia, Accountant Member:

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A), Mangaluru dated 16.01.2019 for Assessment Year 2016-17 in respect of filing of Form No.26Q for quarter No.1 of the Financial Year 2015-16. The grounds raised by the assessee are as under:

1. *The impugned orders of the authorities below are opposed to the law and facts of the case.*
2. *On the facts and circumstances of the case, the authorities below erred in charging late fee u/s 234E of Rs. 22,000/-.*

The appellant craves for leave to, add to, delete from or amend the grounds of appeal.

2. In course of hearing, it was submitted by learned AR of the assessee that as per sub-section (3) of section 200, the assessee deductor has to prepare the statements and submit it to the prescribed Income Tax authorities after paying the tax deducted to the credit of the Central Government. He submitted that as per the provisions of sub-section 3 of section 200, the quarterly statement has to be filed after the payment of TDS to the credit of Central Government. It was also submitted that as per sub-rule (4A) of Rule 31A of Income Tax Rules, 1962, the required form has to be submitted within 30 days from the end of the month in which the deduction is made. Our attention was drawn to page 5 of the Paper Book and it was pointed out that Form No.26Q for quarter 1 for Financial Year 2015-16 was filed on 02.11.2015 and the date of payment of TDS is 21.10.2015 and therefore, the delay is of only 12 days and hence, even if it is held that fees under section 234E is payable, such fees should be for 12 days of delay @ Rs.200/- per day and the late fees should be only Rs.2,400/- and not Rs.22,000/- as levied by the AO.

3. As against this, learned DR of the Revenue supported the order of AO and CIT(A). He also submitted that in the present case, sub-rule 4A of Rule 31A is not applicable because this sub-rule 4A is applicable in respect of filing of Form 26QB and not filing of Form 26Q. He submitted that for filing of Form 26Q, the due date for the quarter ending on 30th June is 15th day of July of the Financial Year and therefore, the demand raised by the AO of Rs.22,000/- for late filing of Form 26Q for quarter 1 of Financial Year 2015-16 is correct and the same should be upheld. In the rejoinder, learned AR of the assessee placed reliance on the Tribunal order rendered in the case of Meghna Gupta Vs. ACIT in ITA No.2649/Del/2018 dated 01.10.2018, copy available on pages 6 to 10 of the Paper Book and in particular our attention was drawn to para 4 of this Tribunal available on page 8 of the Paper Book and it was submitted that in

this para, it is observed by the Tribunal that as per sub-Rule 4A of Rule 31A of Income Tax Rules, 1962, fees under section 234E is leviable only when the statement is filed as prescribed under section 200(3), which in turn provides that the statement is to be filed after payment of tax to the prescribed authority.

4. We have considered the rival submissions. First of all, we reproduce para 4 of the Tribunal order rendered in the case of Meghna Gupta Vs. ACIT (supra) from page 4 of the Paper Book. This para reads as under:

“4. Before us, Ld. Counsel Shri Rakesh Gupta at the outset submitted that it was brought to the notice of the department that, assessee has paid the tax from her own pocket even though the assessee's contention has been that payment has been made separately to each of the vendors which was below the threshold limit of Rs. 50 lacs, therefore, she was not required to deduct TDS u/s 194IA. From No. 26QB and challan of tax deposited were generated on 5.4.2014 from the electronic system which is evident from the orders passed, which clearly mentions the date of filing of challan cum statement as "5.4.2014". Thus, levy of fee u/s 234E is not applicable at all, because there is no delay in filing of the said statement as the same was filed alongwith the tax deposited. He submitted that, from the plain reading of section 234E, section 200(3) r.w. Rule-31A (4A), fee u/s 234E is leviable only when the statement is not filed as prescribed u/s 200(3), which in turn provides the statement is to be filed after payment of tax to the prescribed authority as per prescribed Rule- 31A(4A). The said Rule provides for filing of 'challan cum statement' within seven days from the date of deduction. Since, challan cum statement has been filed by the assessee on 05.04.2014 after paying the tax as required u/s 200(3), therefore, there was no default so as to warrant levy fee u/s 234E. In other words Rule-31A(4A) merely refers to challan cum statement that means that filing of the statement after the tax stands paid. He submitted that had the filing of the statement was envisaged with reference to the date of deduction, then how could the word 'challan' appear in the said sub Rule. 'Challan' word indicates that tax must stand paid and in fact form 26QB is generated simultaneously with the tax paid challan. He further submitted that the tax has been paid and statement has been filed immediately, thus, there is no loss to the revenue; and even if it is taken that there was delay in filing the statement, then it was at best a technical or venial breach,

which should be ignored as held in the decisions reported at Mahavir AGENCY vs. Income Tax OFFICER 58 ITD 386 (Ahmadabad), Income Tax Officer vs. Alhusain Constructions (P) ltd. 68 ITD 390 (Mumbai). The object of introducing section 234E to curb a situation where tax was used to be deducted but statement would not be uploaded by the assessee and such inaction on the part of the assessee would deprive the department to give credit to the person in whose account tax was deducted. In the instant case, tax was paid on 5.4.2014 and statement was filed on 5.4.2014, there could not have been any inconvenience to the department in giving credit to the person concerned. Thus, object behind the levy of fee u/s 234E stood achieved in the present case and for this reason also, there was no reason fee u/s 234E should be levied.”

5. Now we reproduce sub-rule 1 to 4A of Rule 31A from Income Tax Rules, 1962. The same reads as under:

31A. (1) *Every person responsible for deduction of tax under Chapter XVII-B, shall, in accordance with the provisions of sub-section (3) of section 200, deliver, or cause to be delivered, the following quarterly statements to the Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems), namely:—*

- (a) *Statement of deduction of tax under section 192 in Form No. 24Q;*
- (b) *Statement of deduction of tax under sections 193 to 196D in—*
 - (i) *Form No. 27Q in respect of the deductee who is a non-resident not being a company or a foreign company or resident but not ordinarily resident; and*
 - (ii) *Form No. 26Q in respect of all other deductees.*

[(2) Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by the due date specified in the corresponding entry in column (3) of the said Table:

Table

<i>Sl. No.</i>	<i>Date of ending of quarter of financial year</i>	<i>Due date</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
1.	<i>30th June</i>	<i>31st July of the financial year</i>
2.	<i>30th September</i>	<i>31st October of the financial year</i>
3.	<i>31st December</i>	<i>31st January of the financial year</i>
4.	<i>31st March</i>	<i>31st May of the financial year immediately following the financial year in which the deduction is made]</i>

(3) (i) The statements referred to in sub-rule (1) may be furnished in any of the following manners, namely:—

(a) furnishing the statement in paper form;

[(b) furnishing the statement electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5);

(c) furnishing the statement electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).]

(ii) Where,—

(a) the deductor is an office of the Government; or

(b) the deductor is the principal officer of a company; or

(c) the deductor is a person who is required to get his accounts audited under section 44AB in the immediately preceding financial year; or

(d) the number of deductee's records in a statement for any quarter of the financial year are twenty or more,

the deductor shall furnish the statement in the manner specified in [item (b) or item (c) of clause (i)].

(iii) Where deductor is a person other than the person referred to in clause (ii), the statements referred to in sub-rule (1) may, at his option, be delivered or cause to be delivered in the manner specified in [item (b) or item (c) of clause (i)].

[(3A) A claim for refund, for sum paid to the credit of the Central Government under Chapter XVII-B, shall be furnished by the deductor in

Form 26B electronically under digital signature [or verified through an electronic process] in accordance with the procedures, formats and standards specified under sub-rule (5).]

(4) The deductor at the time of preparing statements of tax deducted shall,—

- (i) quote his tax deduction and collection account number (TAN) in the statement;*
- (ii) quote his permanent account number (PAN) in the statement except in the case where the deductor is an office of the Government;*
- (iii) quote the permanent account number of all deductees;*
- (iv) furnish particulars of the tax paid to the Central Government including book identification number or challan identification number, as the case may be;*
- [(v) furnish particulars of amount paid or credited on which tax was not deducted in view of the issue of certificate of no deduction of tax under section 197 by the Assessing Officer of the payee;*
- (vi) furnish particulars of amount paid or credited on which tax was not deducted in view of the compliance of provisions of sub-section (6) of section 194C by the payee;]*
- [(vii) furnish particulars of amount paid or credited on which tax was not deducted in view of the furnishing of declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A by the payee;]*
- [(viii) furnish particulars of amount paid or credited on which tax was not deducted ¹[or deducted at lower rate] in view of the notification issued under sub-section (1F) of section 197A.]*
- ²[(ix) furnish particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under second proviso to section 194N or in view of the exemption provided in third proviso to section 194N or in view of the notification issued under fourth proviso to section 194N.]*
- ³[(x) furnish particulars of amount paid or credited on which tax was not deducted or deducted at lower rate in view of the notification issued under sub-section (5) of section 194A.*
- (xi) furnish particulars of amount paid or credited on which tax was not deducted under sub-section (2A) of section 194LBA.*
- (xii) furnish particulars of amount paid or credited on which tax was not deducted in view of clause (a) or clause (b) of sub-section (1D) of section 197A.*

(xiii) *furnish particulars of amount paid or credited on which tax was not deducted in view of the exemption provided to persons referred to in Board Circular No. 3 of 2002 dated 28th June 2002 or Board Circular No. 11 of 2002 dated 22nd November 2002 or Board Circular No. 18 of 2017 dated 29th May 2017.]*

[(4A) Notwithstanding anything contained in sub-rule (1) or sub-rule (2) or sub-rule (3) or sub-rule (4), every person responsible for deduction of tax under section 194-IA shall furnish to the Director General of Income-tax (System) or the person authorised by the Director General of Income-tax (System) a challan-cum-statement in Form No. 26QB electronically in accordance with the procedures, formats and standards specified under sub-rule (5) within [thirty days] from the end of the month in which the deduction is made.]”

6. We also reproduce sub-section (3) of section 200 of Income Tax Act, 1961. This reads as under:

“(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

***Provided** that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.”*

7. When we go through Rule 31A of Income Tax Rules, 1962, we find that this Rule is in respect of filing of statement of deduction of tax under sub-section 3 of section 200 and sub-rule 1 of Rule 31A talks about Form 26Q also. This is true that sub-rule 4A of Rule 31A talks about Form 26QB whereas in the present case, the dispute is regarding filing of Form 26Q and therefore, sub-rule 1 is applicable and not sub-rule 4A. But this is also true that for the entire Rule 31A of Income Tax Rules, 1962, section 200(3) is to

be taken into consideration. As per sub-section 3 of section 200 as reproduced above, it is seen that assessee deductor has to file statements for such period as may be prescribed and deliver or caused to be delivered to the prescribed Income Tax authorities such statement in such Form within such time as may be prescribed. Rule 31A is the prescribed rules in this regard and as per sub-rule 1 and sub-rule 2 of Rule 31A, 15th July of the Financial Year is the due date for filing Form 26Q for the first quarter ending on 30th June. Now, we examine the applicability of the Tribunal order cited by learned AR of the assessee having been rendered in the case of Meghna Gupta Vs. ACIT (supra). In para 4 of the Tribunal order as reproduced above, this is the observation of the Tribunal that fees under section 234E is leviable only when the statement is not filed as prescribed under section 200(3) of the Income Tax Act, 1961 which in turn provides that the statement is to be filed after payment of the TDS to the prescribed authorities. In the present case, the TDS was deposited on 21.10.2015 and the actual date of filing of Form 26Q is 02.11.2015 and hence, as per this Tribunal order, the delay in filing of statement is to be counted from the date of payment of TDS because before the payment of TDS, the quarterly statement cannot be filed and if we compute the delay in this manner, the delay is of 12 days only as per the working provided by the assessee on page 5 of the Paper Book. Accordingly, we uphold the levy of fees under section 234E to this extent i.e., Rs.2,400/- and delete the balance amount of fees levied by the AO and confirmed by learned CIT(A) under section 234E of the Income Tax Act, 1961.

8. In the result, appeal of the assessee is partly allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,

Dated: 25th September, 2020.

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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.