

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

Sl. No.	ITA No.	A.Y. PERIOD	AMOUNT
1.	633/Bang/2019	2013-14 Q2 FORM 24Q	Rs.57,800
2.	634/Bang/2019	2013-14 Q4 FORM 26Q	Rs.3,387
3.	635/Bang/2019	2013-14 Q3 FORM 24Q	Rs.39,400
4.	636/Bang/2019	2013-14 Q4 FORM 24Q	Rs.15,400
5.	637/Bang/2019	2013-14 Q2 FORM27Q	Rs.68,200
6.	638/Bang/2019	2013-14 Q2 FORM26Q	Rs.29,430
7.	639/Bang/2019	2013-14 Q3 FORM26Q	Rs.40,905
8.	640/Bang/2019	2013-14 Q3 FORM27Q	Rs.49,800
9.	641/Bang/2019	2013-14 Q4 FORM27Q	Rs.25,800
10.	642/Bang/2019	2014-15 Q1 FORM24Q	Rs.17,800
11.	643/Bang/2019	2014-15 Q1 FORM26Q	Rs.14,000
12.	644/Bang/2019	2014-15 Q1 FORM27Q	Rs.12,400

M/s. Image Labels Pvt. Ltd., No.10, Off Kanakapura Main Road, Vajarahalli, Bangalore-560 062. PAN: AAACI 3830P TAN: BLR 100543 E	Vs.	The Assistant Commissioner of Income Tax, CPC (TDS), Ghaziabad – 201 010 Uttra Pradesh.
APPELLANT		RESPONDENT

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

Date of hearing	:	24-11-2020
Date of Pronouncement	:	24-11-2020

ORDER

Per Bench

These are a batch of 12 appeals filed by Assessee against different orders, all dated 30.10.2019 of CIT(Appeals)-3, Bangalore relating to assessment years 2013-14 & 2014-15.

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 2013-14 (AY 2013-14 to 2014-15). 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 some of the appeals were filed by the Assessee belated and the reasons for condonation of delay in filing the appeals were no sufficient. 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)*. 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 where there was delay in filing appeal before CIT(A) observing that the Assessee has not brought sufficient cause for delay. As far as appeals before CIT(A) that were filed within time like appeals for AY 2013-14 Q2 Form 24Q and Q4 Form 26Q and other similar appeals are concerned, the CIT(A) held that the appeals had been filed without the relevant order under Sec.200A of the Act and hence the appeals were defective.

7. None appeared for the Assessee. We have considered the plea raised by the Assessee in the grounds of appeal and the orders of the revenue authorities. The learned DR reiterated the stand of the revenue as reflected in the order of the CIT(A).

8. We have considered the submissions of the learned DR and also the grounds of appeal filed by the Assessee. The reasons for the delay in filing appeal before CIT(A) has been explained as owing to shifting of registered office and factory of the Assessee company from 270/2, Bommanahally, Bangalore-560068, which was the place of business at the time of incorporation of the Assessee in 1996 to 214, Changamaraju Sapota Gardens, JP Nagar 7th Phase, Bangalore-560078 w.e.f. from 1/10/1997. The annual return of TDS since 1998 continued to be filed with the old address and the communication from the Department were all sent to the old address. It is only after e-mails were received that the Assessee knew about the impugned orders of demand u/s.200A of the Act. It is not in dispute that if the ratio laid down by the Hon'ble Karnataka High Court in the case of *Fatehraj 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 *Fatehraj 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). The Assessee will be to hardship if delay in filing the appeal is not condoned. Reliance was placed on the decision of the Hon'ble Apex Court

9. 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, as laid down by the Hon'ble Supreme Court in the case of *Land Acquisition Vs. Mst. Katiji and Others (1987) 167 ITR 471 (SC)*, 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.

10. As far as appeals for AY 2013-14 Q2 Form 24Q and Q4 Form 26Q , i.e., ITA Nos. 633 & 634/Bang/2019 and appeals where there has been no delay in filing appeals before CIT(A) are concerned, the necessary orders have been filed before us along with letter dated 5.4.2019. We are of the view that the CIT(A) ought to have allowed opportunity to the Assessee to file the orders u/s.200A of the Act and ought not to have dismissed the appeals on the ground of non-filing of the orders u/s.200A of the Act. The Assessee is directed to file before the CIT(A), the orders u/s.200A of the Act in all the appeals and the CIT(A) is directed to consider the issue on merits after affording the Assessee opportunity of being heard.

11. In the result, all the appeals by the assessee are treated as allowed for statistical purpose.

Pronounced in the open court on this 24th day of November, 2020.

Sd/-
(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 24th November, 2020.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.