IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(THROUGH VIRTUAL COURT)

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA Nos.217 to 222/ALLD/2018
Assessment Year: 2013-14

Elchico Hotels & Restaurants Private Limited 26/28, M. G. Marg., Civil Lines, Allahabad – 211001.	v.	**DCIT, CPC(TDS), Allahabad**
PAN:**AAACE4923H**		
(Appellant)		(Respondent)

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ITA Nos.223 to 224/ALLD/2018
Assessment Year: 2014-15

Elchico Hotels & Restaurants Private Limited 26/28, M. G. Marg., Civil Lines, Allahabad – 211001.	v.	**DCIT, CPC(TDS), Allahabad**
PAN:**AAACE4923H**		
(Appellant)		(Respondent)

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ITA Nos.225 to 228/ALLD/2018
Assessment Year: 2015-16

Elchico Hotels & Restaurants Private Limited 26/28, M. G. Marg., Civil Lines, Allahabad – 211001.	v.	**DCIT, CPC(TDS), Allahabad**
PAN:**AAACE4923H**		
(Appellant)		(Respondent)

Appellant by:	Shri Tanu Singhal, CA
Respondent by:	Shri A. K. Singh,Sr. DR

Date of hearing:	01. 12. 2020
Date of pronouncement:	02.12. 2020

O R D E R

PER SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

These twelve appeals by the assessee are directed against twelve orders passed by Commissioner of Income Tax (Appeals), Allahabad all dated 16.02.2018 arising from intimations issued by the Assessing Officer while processing the quarterly TDS statement/TDS return u/s 200A(1) of the Income Tax Act for respective quarters of the assessment year 2013-14 to 2015-16.The assessee has raised common grounds in these appeals. The grounds in the appeal ITA No. 217/ALLD/2018 are as under:

"1.Because the Ld. Commissioner of Income Tax (Appeals) has erred in law and onfacts to confirm the impugned addition made by the Assessing officer byimposing penalty by way of fees of Rs. 44602/- under Sec 234E of the Act for latefiling of TDS returns in Form 24Q for the quarter ended 30th September, 2012without any enabling provision u/s 200A of the Act to impose such penalty u/s234E upto 01.06.2015 as amended by Finance Act 2015 by insertion of subsection(c) to Sec 200A w.e.f. 01.06.2015 and the Assessing Officer has acted beyond themandate of Income Tax Act on this point.

2. Because the Ld. Commissioner of Income Tax (Appeals) has erred in law and onfacts to confirm the addition made by the Assessing Officer by relying on decisionof a Gujarat High Court (i.e. other than the jurisdictional High Court) in the case of Rajesh Kouranivs Union of India & Others in Special Civil Application No. 302of 2014 dated 20.06.2017 given in favor of Revenue without considering the viewtaken by Karnataka High Court (i.e. other than the jurisdictional High Court) in the case of Sree Ayyappa Educational Charitable Trust vs DCIT(CPC-TDS), (2017)and Koraga PoojariRavindravs Union of India, (2017) and various benches ofIncome Tax Appellate Tribunal in the cases listed below, in deciding the sameissue in favor of the assessee having similar facts as in the appellant's case.

1. ITAT Delhi Bench in case of Dharam Deep Public School vs DCIT (2018)

2. ITAT Ahmedabad Bench in case of Kargil Holdings Private Limited vs DCIT(TDS),CPC (March,2017)

3. ITAT Ahmedabad Bench in case of Dhanlaxmi Developers vsDCIT(CPC,TDS,2016

4. ITAT Amritsar Bench in case of Sibia Healthcare Private Limited vsDCIT(TDS),(2015) 61 Taxmann.com 70

5. ITAT Ahmeda bad Bench in case of Lions Club of North Surat Charitable Trust vsITO-II (2015) 9 TMI 1231

6. ITAT Chennai Bench in case of Smt IndhranivsDCIT(TDS), CPC (2015) 60Taxmann.com 312

7. ITAT Cochin in case of Little Servants of Divine Providence Charitable Trust ITO(TDS)

3. Because the order of Ld. C.I.T. (Appeals), Allahabad was bad in law and on facts.

The Appellant prays for adducing further or other grounds of Appeal before or at the time of hearing the appeal.

2. The only issue arises in this appeal is regarding validity of adjustments made by the AO on account of levy of late fee u/s 234E due to delay in delivering the quarterly TDS statement as well as TDS return for the respective quarters of this assessment year. For the AY 2013-14, the assessee has filed its quarterly TDS statement in Form 24Q as well as TDS return in Form 26Q on 21.06.2013. Therefore, there was a delay in furnishing TDS statement and TDS return in Form No.24Q & 26Q for first quarter of FY 2012-13 relevant to the AY 2013-14.

3. The ld. AR of the assessee has submitted that the adjustment made by the AO while processing the TDS statement and TDS return u/s 200A of the Income Tax Act is without jurisdiction and prior to the Amendment to section 200A(1) by Finance Act 2015 w.e.f. 01.06.2015 and there was no power with the AO to make an adjustment on account of levy of late fee u/s 234E of the Act. The ld. AR has further contended that by this Amendment w.e.f. 01.06.2015, Clause (c) to section 200A(1) was inserted thereby the AO is conferred with the power and jurisdiction to make adjustment on account of levy of late fee u/s 234E of the Income Tax Act. The TDS statement and TDS return for the first quarter of F.Y 2012-13 were filed by the assessee much prior to the amendment brought into statute and therefore the delay in filing the TDS statement and TDS return would not attract the adjustment while issuing the intimation u/s 200A of the Income Tax Act. Section 234E of the Act is only a charging provision. This could not be applied until and unless it is expressly provided in the machinery provision. Clause (c), (d) and (f) of section 200A(1) have

come into effect only w.e.f. 01.06.2015 and hence there was no enabling provision under section 200A for making such adjustment and raising demand in respect of the levy of late fee u/s 234E of the Act. Thus the ld. AR has submitted that once the Amendment is prospective w.e.f. 01.06.2015 then prior to the said amendment, the AO had no jurisdiction to make the adjustment while issuing the intimation u/s 200A of the Act. In support of her contention, the AR has relied the decision of Hon'ble Karnataka High Court in the case of Sri FatherajSinghvi&Ors vs. Union of India reported in (2016) 73 taxman.com 252 / (2016) 289 CTR 602. The ld. AR has further submitted that this issue of authority of AO prior to the amendment has been considered by this Tribunal in a series of decisions and decided in favour of the assessee. She has relied upon the decision of the Agra Benches of Tribunal dated 31.05.2018 in the case of State of Bank of India vs. ITO in ITA Nos.3 to 90 of 2018 as well as the decision of Delhi Benches of Tribunal dated 24.06.2019 in the case of Shri Ashok Kumar vs. ACIT in ITA No.2039 of 2018. Thus the ld. AR has contended that the adjustment made by the AO while processing the quarterly TDS statement and TDS return for the AY 2013-14 to 2014-15 is not valid.

4. On the other hand, the ld. DR has submitted that section 234E is an independent charging section and not dependent on the enabling provision of section 200A of the Income Tax Act. The validity of the provisions of section 234E was upheld by the Hon'ble High Court and Supreme Court and therefore once the levy of late fee u/s 234E is held as valid then the assessee cannot take plea of enabling provision brought into statute w.e.f. 01.06.2015. The ld. DR has further contended that section 234E begins with non-obstante clause and therefore has an overriding effect on the other provisions of the Act. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant materials on record. For the AY 2013-14, there is no dispute that the assessee delivered the

quarterly TDS statement as well as TDS return belatedly as it was filed on 21.06.2013. The AO has processed the quarterly TDS statement and return while issuing the intimation u/s 200A of the Income Tax Act on 30.01.2014. The AO has made adjustments on account of late filing fee u/s 234E which has been challenged by the assessee for want of enabling provision and jurisdiction of the AO. Section 200(3) provides submission of quarterly TDS statement as well as return of TDS as an obligation of the deductor. Section 200A(1) of the Act envisages the method to be followed by the AO to process such TDS statement and return. This provision also provides for the adjustments which are required to be made by the AO while processing the TDS statement and return. Though, the charging section for levy of late fee u/s 234E was already in the Statute with effect from the year 2012 however, there was no machinery provision u/s 200A so as to enable the AO to make adjustment on account of levy of late fee u/s 234E of the Act. Undisputedly, Clause (c) to section 200A(1) was brought into Statute by the Finance Act 2015 w.e.f. 01.06.2015 and prior to such amendment, there was no enabling/machinery provision for making such adjustments while processing the TDS statement/return u/s 200A of the Act. It has also not been in dispute that the Amendment in section 200A(1) and insertion of Clause (c)is prospective and not retrospective as held by the Hon'ble Karnataka High Court in the case of Sri FatherajSinghvi(supra) in para no.21 to 23 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 regulatorymechanism 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 respondentDepartment 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."

6. Further an identical issue has been considered by this Tribunal in a series of decisions including the decisions relied upon by the ld. AR of the assessee. In the case of State Bank of India vs. ITO (supra), the Agra Benches of Tribunal has held in para no.8 to 11 as under:

8. Heard the rival contention and perused the material relevant. We find that while deciding the issue against the appellant assessee the ld. CIT(A) has placed reliance on 'Rajesh Kaurani vs. Union of India', 83 Taxmann.com 137 (Guj.) wherein it was held that Section 200A of the Act is a machinery provision providing the mechanism for processing a TDS statement of deduction of tax at source and for making adjustment. The Ld. CIT(A) has further held that this decision was delivered after considering numerous ITAT and High Court decisions and therefore this decision in 'Rajesh Kaurani' (Supra), holds the fields.

9. It is seen that prior 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E of the Act. The provision of Section 234E of the Act is charging provision i.e. substantive provision which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fee for any delay in filing the TDS statement for

the period prior to 01.06.2015. The counsel for the assessee has rightly contended that in the absence of enabling provisions u/s 200A of the Act, such levy of late fee is not valid relying onthe decisions in the cases of 'CIT vs. Vatika Township Pvt. Ltd. (2014) 367 ITR 466 (SC), 'SudarshanGoyalvs DCIT (TDS)' ITA No.442/Agr/2017 and FatehrajSinghvi Vs. UOI (2016) 289 CTR 0602 (Karn) (HC). The decisions relied on by the Ld. DR are distinguishable on facts, as the issue involved in those cases pertains to interest u/s 201(1) and 201(1A) on the amount of TDS whereas in the present cases the issue were pertains to liability of late fee u/s 234E of the Act for delay in filing TDS statement which was inserted from 01.06.2015.

10. On similar facts, we have decided the same issue in the assessee's own case 'SudershanGoyal vs. DCIT (TDS)', in ITA No. 442/Agra/2017 dtd. 09.04.2018 authored by one of us (the Ld. J.M.). The relevant part of the order is reproduced as follows:

> *"3. Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOI', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in 'Rajesh Kaurani' (supra) holds the field. 4. We do not find the view taken by the ld. CIT(A) to be correct in law. As against 'Rajesh Kaurani' (supra), 'ShriFatehrajSinghvi and Others vs.UOI', 73 Taxmann.com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing 'Rajesh Kaurani' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.*
>
> *5. In 'Shri FatehrajSinghvi and Others' (supra) it has been held, inter alia, as follows:*
>
> *"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 thedeductor to reopen the said question unless he has made payment under protest."*
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> *6. In view of the above, respectfully following 'Shri FatehrajSinghvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA*

> *No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."*
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> *11. In the above view, respectfully following 'Shri FatehrajSinghvi and Ors' (Supra), 'Sibia Healthcare Pvt. Ltd. Vs. DCIT (Supra), 'Shri Kaur Chand Jain vs. DCIT', (Supra), and our own finding in the case of 'SudershanGoyal' (Supra), we accept the grievance of the assessees as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under section 234E of the Act is cancelled.*

6.1 The Tribunal has held that the adjustment made by the AO on account of levy of late fee u/s 234E while issuing the intimation u/s 200A prior to insertion of the Clause (c) w.e.f. 01.06.2015 is not valid and the same was cancelled.

7. Similarly, the Delhi Tribunal in the case of Shri Ashok Kumar (supra) has considered this issue in para no.5 to 8 as under:

> *5. We have heard the rival submission and perused the relevant material on record. We find that the issue raised in the appeal is whether the Ld. CIT(A) was justified in confirming the levy of late fee under section 234E of the Act in the statement of tax deducted at source filed in form No.26QB and processed under section 200A of the Act. We also note that an amendment has been brought in the Finance Act, 2015, w.e.f., 01/06/2015, ITA No.2039/Del/2018 which paved the way for levying the fee under section 234E of the Act in the statement processed under section 200A of the Act. The learned CIT(A) following the decision of Honble Gujarat High Court in the case of Rajesh Kaurani (supra) where it is held that even prior to 01.06.2015, it was always open for the Revenue to calculate fee in terms of section 234E of the Act. In the case of FatehrajSinghvi (supra) decided by the Honble Karnataka High Court, it is held that no late fee could be levied under section 234E of the Act in the returns processed prior to 01.06.2015. Thus, the Honble court in the case of FatehrajSinghvi (Supra), has restricted levy of late fee in returns processed prior to01.06.2015 and not return filed prior to 01.06.2015. Section 200A, which has been amended w.e.f. 01.06.2015 also says about processing of returns. The relevant part of Section 200A(i) is reproduced as under:*
>
> > *"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) ……*
> >
> > *(b) ……..*
> >
> > *(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;*
> >
> > *(d) ……*
> >
> > *(e) ……*

(f) ……..…..

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".

6. In the instant case the quarterly return has been filed on27.12.2014 with a delay of 203 days. According to the learned CIT(A), the rectification order was passed by the CPC and intimated to the assessee by e-mail on 10.03.2016, wherein late fee of Rs.40,600/- was charged u/s 234E of the Act. But assessee says that he has not received any original order of processing of return and received only rectification order levying late fee. Thus, moot question of dispute is whether the return was processed prior to 01.06.2015 or not. If it is processed prior to 01.06.2015, no late fee can be levied in view of the decision of the Hon'ble Karnataka High Court in the case of FatehrajSinghvi Vs. Deputy Commissioner of Income Tax (TDS) (ITA No. 442/Agra/2017, dated 09.04.2018) has considered both the decisions of HonbleKarnatka High Court in the case of Shri FatehrajSinghvi (supra) and decision of Honble Gujarat Honble High Court in the case of Shri Rajesh Kaurani (supra). The Tribunal held that where there is difference of opinion in two decisions of the High Courts, in view of the decisions of the Honble Supreme Court in the case of CIT Vs. Vatika Township Private Limited (2014) 367 ITR 466(SC) and CIT Vs. Vegetable Products Ltd. (1973) 88 ITR 192 (SC), the decision favourable to the assessee should be followed. The Coordinate Bench of Agra in the case of SudarshanGoyal vs. DCIT (TDS) (ITA No. 442/Agra/2017 order dated 09/04/2018) has adjudicated this issue as under:

"The issue involved in this appeal is as to whether late filing fee u/s 234E of the IT Act has rightly been charged in the intimation dated10.11.2013 issued u/s 200A of the Act while processing the TDS returns/statement, the enabling clause

(c) having been inserted in the section w.e.f. 01.06.2015. Before 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/ s 234E. As such, as per ITA No.2039/Del/2018 the assessee, in respect of TDS statement filed for a period prior to 01.06.2015, no late fee could be levied in the intimation issued u/s 200A of the Act.

3. Heard. The Id. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOT, 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The Id. CIT(A) has held that this decision was I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/ 2018 delivered after considering numerous IT AT/ High Court decisions and so, this decision in Rajesh Kaurani (supra) holds the field.

4. We do not find the view taken by the Id. CIT(A) to be correct in law. As against Rajesh Kaurani' (supra), 'Shri FatehrajSinghvi and Others vs.UOT, 73 Taxmann.com 252 (Ker), as also admitted by the Id. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the Id. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing Rajesh Kaurani' (supra). However, while observing so, the Id. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88

ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In 'Shri FatehrajSinghvi and Others' (supra) it has been held, inter alia, as follows:

"22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, IT.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 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 to1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, ITA No.2039/Del/2018 the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."

6. In view of the above, respectfully following 'Shri FatehrajSinghvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled.

7. Similarly, the Coordinate Bench of Jaipur in the case of M/s Mentor India Ltd Vs DCIT (ITA No. 738/JP/2016 order dated 16/12/2016) has taken a view favourable to the assessee observing as under:

“6. Now the assessee is in appeal before us. In ITA No. 438/JP/2016, the only effective ground is against confirmation of late filing fee of Rs. 48,402/'; charged by the A.O. U/s 234E of the Act. In this regard, the Ld. AR of the assessee has reiterated the arguments as made in the written submissions and has further submitted that the issue is no more res-integra. He placed reliance on the decision of the ITAT, Ahmadabad decision in the case of Perfect Cropscience Pvt. Ltd. Vs DCIT in ITA No. 2957 to 2963/Ahd/2015 and the decision of the Hon'ble Karnataka High Court in the case of FatherajSinghvi&ors. Vs Union of India & Drs. (2016) 289 CTR (Kar) 602.

7. On the contrary, the Id DR has opposed the submissions and supported the orders of the authorities below. She relied on the decision of the Hon'ble Jurisdictional High Court rendered in the case of DundlodShikshanSansthan Vs. Union of India (2015) 63 taxmann.com 243 (Raj.).

8. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. Recently the Coordinate Bench of Jaipur ITAT in the case of M/s. Sandeep Jhanwar Advisory Services

Pvt. Ltd. Vs. The TDS CPC, Gaziabad in ITA No. 722 & 723/JP/2016 for the A. Y. 2013 J 4 / Q-3 & 4 has allowed the appeal of the assessee by observing as under:-

"3.5. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. We have also gone through the case laws relied upon by the Id. Counsel. We find merit into the contention of Id. Counsel that he ITA No.2039/Del/2018 jurisdictional High Court has decided the validity of section 234E, but has not decide the issue of power of AO for levy of tax under section 234E in the judgment rendered in the case of M/ s. DundlodShikshanSansthan and Others (supra) as relied by Id. CIT (A). We have considered the recent decision of Hon'ble Karnataka High Court in the case of Shri FatherajSinghvi&Ors (supra) wherein the issue of levy of fees u/s 234E on statements processed u/s 200A before 01.06.2015 has been categorically discussed by the Hon'ble High Court and in para 24 of the said order it was held that "no demand for fee u/s 234E can be made in intimation issued for TDS deducted u/s 200A before Geeta Star Hotels & Resorts Pvt. Ltd. Vs. DCIT 01.06.2015". We have also gone through the judgment of Hon'ble Supreme Court in the case of CIT vs. Vatika Township Pvt. Ltd. (supra) wherein the Hon'ble Apex Court has discussed in detail the general principle of concerning retrospectively and held that unless contrary intention appears, a legislation is presumed not to have a retrospective operation. Respectfully following the above judgments of Hon'ble Supreme Court and Hon'ble Karnataka High Court, we set aside the order of Id. CIT (A) and direct the AO to drop the demand raised of Rs. 4,200/- u/s 234E on statements processed u/s 200A before 01.06.2015. Thus grounds raised by the assessee are allowed." The Hon'ble Jurisdictional High Court in the case of DundlodShikshanSansthanVs. Union of India (supra) has decided the issue of vires of Section 234E of the Act. The Hon'ble Karnataka High Court in the case of FatherajSinghvi&ors. Vs Union of India &Ors. (supra) has held that the demand U/s 200A for computation and intimation for the payment of fee U/s 234E could not be made in purported exercise of power U/s 200A for the period of the respective assessment years prior to 1st June, 2015. When the intimation of the demand notices U/s 200A is held to be without authority of law so far as it relates to computation and demand of fee U/s 234E, the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise. We find that the Hon'ble Jurisdictional High Court in the case of DundlodShikshanGeeta Star Hotels & Resorts Pvt. Ltd. Vs. DCIT Sansthan Vs. Union of India (supra) has also considered the decision of the Hon'ble Bombay High Court in the case of RashmikantKundalia Vs. Union of India (2015) 229 Taxman 596 wherein the Hon'ble High Court has decided the nature of demand. The Hon'ble High Court has held that Section 234E of the Act is not punitive in nature but a fee which is a fixed charge for the extra service which the department has to prove due to the late filing of the TDS statements. Hence from both the decisions relied upon by the Id. DR, the issue of power of imposing late fee is not decided but the Hon'ble Karnataka High Court in the case of FatherajSinghvi&ors. Vs. Union of India &Ors. (supra) has decided the issue in favour of the assessee and held that the late fee U/s 234E of the Act has raised vide impugned demand notice U/s 200A of the Act. We find force in the contention of the Id. AR of the assessee. If there is conflicting views taken by the two Hon'ble Courts, then the view, ITA No.2039/Del/2018 which favours the assessee should be adopted. In this regard, the Id AR of the assessee has relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vatika Township P. Ltd. (2014) 367 ITR 466 (SC). In view of the decision of the Hon'ble Supreme Court in the case of CIT Vs.

Vatika Township (supra), the demand so raised are directed to be deleted. Similarly identical findings have also been given in all the appeals of other assessment years."

8. In view of above, we feel it appropriate to restore the issue in dispute to the file of learned CIT(A) to ascertain the date of processing of return and provide a copy of the said order of processing to the assessee and decide the issue in accordance with law after affording adequate opportunity of being heard to both the parties."

7.1 In the above case, the Delhi Tribunal was of the view that the Amendment in provision u/s 200A is prospective and not retrospective.

8. Thus, prior to the Amendment to section 200A w.e.f. 01.06.2015, the AO was not given the power to levy for late fee while processing the TDS statement/TDS return. The assessee delivered the TDS statement as well as return much prior to the amendment brought into Statute w.e.f. 01.06.2015 and even the AO has issued intimation prior to such amendment therefore, the adjustments made by the AO without any enabling provision is invalid and unjustified. Once the amendment is held to be prospective, the AO gets the jurisdiction/power to make the adjustment only w.e.f. 01.06.2015 and therefore, prior to 01.06.2015 it was not within the jurisdiction of the AO to make the adjustments on account of levy of late fee u/s 234E of the Act. Accordingly, the adjustments made by the AO while issuing intimation u/s 200A(1) of the Act, is not sustainable and the same is deleted.

9. There are identical facts for the AY 2013-14 wherein the assessee submitted the TDS statement and TDS return on 02.09.2013 which is prior to the amendment w.e.f 01.06.2015. Hence in the absence of any continuous delay, even after the 01.06.2015 the adjustment made by the AO is not justified and the same is deleted.

10. The Appeal No.217 to 224 of 2018 involving common and identical issue are decided in favour of the assessee and consequently the adjustment made by the AO on account of levy of late fee u/s 234E is deleted.

11. As regards the Appeal No.225 to 228 of 2018 for the AY 2015-16, the ld. AR has fairly conceded that since the quarterly statement and return was filed after the amendment u/s 200A(1) w.e.f. 01.06.2015 and therefore, the ld. AR of the assessee has stated at Bar that the assessee does not press these four appeals and the same may be dismissed. The ld. DR raised no objection if these four appeals for the AY 2015-16 are dismissed as not pressed. In view of the statement of the ld. counsel for the assessee as well as fact that these four appeals are against the levy of late fee u/s 234E pertaining to the delay even after the amendment to the provision of section 200A(1) w.e.f. 01.06.2015, these appeal are dismissed being not pressed.

12. In the result, the Appeal No.217 to 224 of 2018 are allowed and Appeal No.225 to 228 of 2018 are dismissed.

Order pronounced in the open Court on 02/12/2020.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 02/12/2020
RS

Copy forwarded to:

1. Appellant –Elchico Hotels & Restaurants Private Limited
2. Respondent -DCIT, CPC(TDS), Allahabad
3. CIT(A) -
4. CIT
5. DR -

By order

Assistant Registrar