

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1086/JP/2019  
निर्धारण वर्ष/Assessment Year : 2014-15 (1st Qtr),

Special Judge Court SC/ST (Prevention of Atrocities Cases) Ajmer	बनाम Vs.	ITO (TDS), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JDHSO 4933 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya (ITP)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary  
(Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 19/01/2021  
उदघोषणा की तारीख / Date of Pronouncement : 28/01/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This appeal has been filed by the assessee against the order of the Id. CIT(A), Ajmer dated 09/05/2019 for the A.Y. 2014-15 (1st Qtr) wherein the assessee has raised following grounds of appeal:

- "1. The impugned order u/s 200A dated 09.05.2019 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.
2. Rs. 47,000/-: The Id. CIT(A) erred in law as well as on the facts of the case in confirming the demand raised by the ACIT, CPC (TDS), Ghaziabad/ ITO (TDS), on account of the impugned late filing levy u/s 234E of Rs. 47,000/- for 1<sup>st</sup> Quarter of AY 2014-15. The demand so

*raised is totally contrary to the provisions of law and facts hence, kindly be quashed in full."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. During the course of hearing, the Id. AR submitted that the assessee filed its TDS return (Form 24Q) for the 1<sup>st</sup> quarter for F.Y. 2013-14 on 11<sup>th</sup> October, 2017, for which the due date was 31<sup>st</sup> July 2013 which was extended to 31<sup>st</sup> March 2014 vide Circular No. 07/2014. The Id. ACIT - TDS issued an intimation letter dated 14<sup>th</sup> October 2017 u/s 200A of the Income Tax Act, 1961 (in short, the Act) imposing a penalty of Rs. 47,000/- u/s 234E of the Act for the alleged delayed in filling of TDS return. Being aggrieved, the assessee filed an appeal before the Id. CIT(A) and the Id. CIT(A) after considering all the reply and precedents passed the impugned order dated 09/05/2019 and his findings read as under:

*"I have gone through the order and grounds of appeal carefully. It is seen that from the intimation issued u/s 200A that the TDS statement for the 1<sup>st</sup> quarter of the F.Y. 2013-14 was processed on 14/10/2017. With effect from 01.06.2015, adjustments in respect of the fee paid u/s 234E can be made under clause (c) of Sub-section 1 of Section 200A. As the TDS return of the appellant has been processed on 04.10.2017, therefore I am of the considered view that adjustment made under section 200(A)(1)(c) in respect of the*

*fee levied u/s 234E is valid and in accordance with the provisions of law. Hence this ground of appeal is dismissed."*

4. It was submitted by the Id AR that the only issue involved in the present case is of charging of fee u/s 234E of the Act w.r.t. the period falling prior to amendment made to S. 200A(1) of the Act vide Finance Act, 2015 w.e.f. 01.06.2015., while processing the TDS return. Firstly, Section 200A of the Act which was inserted by Finance Act, 2009 w.e.f. 1-4-2010. Thereafter, S. 234E of the Act, was introduced by Finance Act, 2012 w.e.f. 1-7-2012. Thereafter, the aforesaid amendment was made by inserting clause (c) in S. 200A(1) w.e.f. 01.06.2015. Since the period involved in all the above appeals, relating to which, the impugned fee is under challenge, fall prior to 01.06.2015 hence the validity of assumption of jurisdiction by the concerned officer is under challenge.

5. It was submitted by the Id AR that from a perusal of Section 200A and the others, it can be clearly seen from the provisions that though a fee should be charged for default in filling statement as per Section 200 of the Act but the machinery and competence to charge such fee u/s 234E was not conferred until amendment was brought by Finance Act, 2015 in Section 200A of the Act (made effective from 1.6.2015). This clearly means that there

was no mechanism of charging of fees prior to 1.06.2015 w.r.t. the period falling before 01.06.2015. Thus, Prior to the amendment in Section 200A of the Act w.e.f. 1.06.2015, the Assessing officer had no authority at all to levy fees pertaining to the period prior to 01.06.2015. This can be clearly understood from the fact that the amendment was made only from Finance Act, 2015. Hence where the AO did not have power to charge fees, such an intimation for demand of fees does not hold any authority. To interpret otherwise, shall have the effect of applying a prospective enactment retrospectively, which is not permissible in law.

6. In support, the Id AR has placed reliance on the decisions in case of Fatheraj Singhvi vs. UOI [2016] 289 CTR 602, Pune v. DCIT [2016] 182 TTJ 129 (Pune-Trib.), Shri Bhavesh Shantilal Sheth vs. ACIT TDS, CPC (*ITA No. 6507/Mum/2017 dated 08.01.2019*), M/s Sandeep Jhanwar Advisory Services Pvt. Ltd. (*ITA No. 722 & 723/JPR/2016 dated 18.10.2016*), Mentor India vs. DCIT (*ITA No. 738/JP/2016 dated 09.12.2016*), Geeta Star Hotels & Resorts P. Ltd. vs. DCIT (*ITA No. 14/JPR/2017 dated 22.10.2018*), Trimurthy Buildcon (P) Ltd. vs. DCIT 174 ITD 252 (JP) (2019) and Station Headquarters (Army) & Ors. Vs. ACIT 200 TTJ (Jd) 1 (2019).

7. The Id. DR is heard who has submitted that the assessee has filed the quarterly TDS return sometime in year 2017 which is well after amendment to the provisions in section 200A w.e.f 01.06.2015 and thereafter an intimation has been issued by ACIT-TDS on 4<sup>th</sup> December, 2017 u/s 200A of the Act imposing the late filing fees u/s 234E of the Act. It was accordingly submitted that the ACIT-TDS was well within jurisdiction to levy late filing fees and there is no infirmity in the order of the Id. CIT(A) in confirming the said levy and accordingly, the order of the Id. CIT(A) should be confirmed.

8. We have heard the rival contentions and perused the material available on record. It is now a settled legal proposition that the amendment to section 200A is prospective in nature and prior to 01.6.2015, the Assessing officer doesn't have power to charge fees under section 234E of the Act. In other words, where the TDS statements have been filed after 01.6.2015 and processing thereof happens and intimation issued thereafter, the Assessing officer is well within his jurisdiction to levy fees under section 234E of the Act. In the present case as well, the filing of TDS statement has happened in year 2017 and thereafter, the same has been processed and intimation issued on 4.12.2017 under section 200A by ACIT-TDS levying late filing

fees under section 234E of the Act. The Assessing officer was thus well within his jurisdiction to levy fees under section 234E of the Act. The contention of the Id AR is that since the TDS statement pertains to the period i.e for the financial year 2013-14(1<sup>st</sup> quarter) even though the same has been filed in the year 2017, the Assessing officer is not empowered to levy late filing fees under section 234E of the Act. We are however unable to accept the aforesaid contention so raised by the Id AR as we find that at the time of processing of the TDS statement i.e. on 14.10.2017, the Assessing officer was empowered to levy such late filing fees, there is no provision to make a distinction between the TDS statements pertaining to period prior to 01.6.2015 and post such period and more, importantly, it will result in creating two classes of assesseees who for the same default will suffer different penal consequences leading to unintended class discrimination which cannot be the intention of the legislature in absence of anything contrary provided under the statute. The Co-ordinate Bench (speaking through one of us) had an occasion to examine similar issue in case of **Shri Uttam Chand Gangwal, Ajmer vs. ACIT, Ghaziabad** (ITA No. 764/JP/2017 dated 23/01/2019) wherein it was held as under:

"8. *In the instant case, the assessee filed its TDS return in Form No. 26Q for the quarter ended 31<sup>st</sup> March, 2015 on 22<sup>nd</sup> July, 2015 and the same was processed and an intimation dated 30 July,*

*2015 was issued by the AO u/s 200A of the Act. Thus, both the filing of the return of income by the assessee and processing thereof has happened much after 1.6.2015 i.e, the date of assumption of jurisdiction by the AO u/s 200A(1)(C) to levy fees under section 234E of the Act. Even though the quarterly return pertains to quarter ended 31.3.2015, the fact remains that there is a continuing default even after 1.6.2015 and the return was actually filed on 22.07.2015. The said provisions cannot be read to say that where an assessee file his return of income for the period falling after 1.6.2015 and there is a delay on his part to file the return in time, he will suffer the levy of fees, however, an assessee who has delayed the filing of the return of income even pertaining to the period prior to 1.06.2015, he can be absolved from such levy even though there is a continuous default on his part even after 1.6.2015. In our view, the AO has acquired the jurisdiction to levy the fees as on 1.06.2015 and therefore, any return filed and processed after 1.6.2015 will fall within his jurisdiction where on occurrence of any default on part of the assessee, he can levy fee so mandated u/s 234E of the Act. Therefore, irrespective of the period to which the quarterly return pertains, where the return is filed after 1.6.2015, the AO can levy fee under section 234E of the Act. At the same time, in terms of determining the period for which fees can be levied, only saving could be that for the period of delay falling prior to 1.06.2015, there could not be any levy of fees as the assumption of jurisdiction to levy such fees have been held by the Courts to be prospective in nature. However, where the delay continues beyond 1.06.2015, the AO is well within his jurisdiction to levy fees under section 234E for the period starting 1.06.2015 to the date of actual filing of the TDS return. In light of the same, in the*

*instant case, the levy of fees under section 234E is upheld for the period 1.06.2015 to the date of actual filing of the TDS return which is 22.07.2015 and the balance fee so levied is hereby deleted. In the result, the ground of appeal is partly allowed."*

In the instant case, as well, there is a continued default beyond 01.06.2015, therefore, following the aforesaid decision, the levy of fees under section 234E, which is levied for each day during which the default continues, is upheld for the period 01.06.2015 to the date of actual filing of the TDS statement and the balance late filing fees so levied is hereby deleted. In the result, the appeal of the assessee is partly allowed.

9. In the result, this appeal of the assessee is partly allowed in light of aforesaid directions.

Order pronounced in the open Court on 28/01/2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 28/01/2021.

**\*Ranjan**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Special Judge Court SC/ST, Ajmer
2. प्रत्यर्थी / The Respondent- ITO (TDS), Ajmer

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA. No. 1086/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar