

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B": HYDERABAD  
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

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| ITA Nos. 2259, 2260 & 2261/H/2018<br>Assessment Year: 2013-14 |     |  |
| Susheela Hospital,<br>Hyderabad.<br><br>PAN - ABDFS 9790F     | Vs. | Income-tax Officer,<br>Ward - 2(2), Hyderabad. |
| (Appellants)  |     | (Respondent)                                   |
| Assessee by:  |     | Smt. S. Sandhya                                |
| Revenue by:   |     | Shri Rohit Mujumdar                            |
| Date of hearing:  |     | 08/04/2021                                     |
| Date of pronouncement:  |     | 21/04/2021                                     |

**ORDER**

**PER BENCH:**

These are the appeals filed by Assessee for AY 2013-14 directed against the CIT(A) - 4, Hyderabad's common order, dated 22/06/2018, involving proceedings u/s 200A of the Income Tax Act, 1961 ; in short "the Act".

2. We notice at the outset that assessee's appeals suffer from 104 days delay in filing before ITAT. To this effect, the assessee filed an affidavit affirming therein that since his

counsel was preoccupied in the audits and other professional activities could not file the appeals and approached another consultant for filing which caused the impugned delay in filing of the appeals. Case law Collector Land Acquisition vs Mst. Katiji & Ors, 1987 AIR 1353 (SC) and University of Delhi Vs. Union of India, Civil Appeal No. 9488 & 9489/2019 dated 17 December, 2019, hold that such a delay; supported by cogent reasons, deserves to be condoned so as to make way for the cause of substantial justice. We accordingly hold that assessee's impugned delay of 104 days is neither intentional nor deliberate but due to the circumstances beyond its control. The same stands condoned. Cases are now taken up for adjudication on merits.

3. The substantive ground raised by the assessee in these appeals is that the CIT(A) erred in upholding the late fee levied by the AO u/s 234E.

4. Brief facts of the case are, the assessee company filed its statements in Form No. 26Q for Quarters 2, 3 & 4 for FY 2012-13 relevant to AYs 2013-14. On verification of these statements, the AO noticed that the assessee filed all these statements, belatedly and hence, raised a demand in the said FY on account of late filing levy u/s 234E by issuing intimations u/s 200A.

5. Against the said action of AO, assessee preferred appeals before the CIT(A) raising a ground that the provisions to include late fee u/s 234E in 'Intimation u/s 200A is not permissible under law and consequently such levy is unsustainable in law and hence the levy is liable to be deleted.

6. Before the CIT(A), the AR of the assessee contended that the provisions to include late fee u/s 234E in the intimation u/s 200A of the Act came into effect only through the Finance Act, 2015 w.e.f. 01/06/2015 and, hence, prior to 01/06/2015 such inclusion of late fee u/s 234E in the intimation u/s 200A is not permissible under the law. For this contention, he relied on various case law, which were extracted by the CIT(A) at page 2 of his order.

7. After considering the submissions of the assessee, the CIT(A) relying on the judgement of Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. UOI, [2017] 83 Taxmann.com 137 confirmed the late filing levy u/s 234E by the TDS CPC, Ghaziabad.

8. Aggrieved by the orders of CIT(A), the assessee preferred appeals before the Tribunal.

9. We have 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 com137 (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.

9.1 It is seen that prior to 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.

9.2 We find that similar issue came up for consideration before the coordinate bench of this Tribunal in the case of M/s Terra Infra Development Ltd., Hyderabad in ITA Nos. 1876 & 1875/Hyd/2017 for AYs 2013-14 and 2014-15, order dated 03/10/2018, wherein the coordinate bench has held as under:

*"4. We find that though the provisions for levy of fee in certain cases has been brought into the Statute book w.e.f. 1.7.2012, it has been brought under the purview of [section 200A](#) only w.e.f. 1.6.2015. Therefore, as rightly held by the Coordinate Bench in the case of M/s. Sonalac Paintings & Coatings Ltd (cited Supra) we hold that the interest u/s 234E cannot be levied in respect of TDS returns filed prior to 1.6.2015. For the sake of ready reference, the relevant para is reproduced hereunder:*

*"10. Now coming to the merits of the case, we find force in the argument of the learned Counsel for the assessee that prior to 01.06.2015, there was no mandate, as per the Statute, to make any adjustment on account of levy of fees u/s 234E while processing TDS returns u/s 200A. We have taken note of the order of the Hon'ble Gujarat High Court holding the amendment made to [section 200A](#) w.e.f. 01.06.2015, giving power to make adjustment on account of fees u/s 234E while processing returns u/s 200A to be retrospective in nature, stating that this power given to the AO is a machinery provision while the substantive provision of the power to levy fees u/s 234E was always there on the Statute from 01.06.2012. But at the same time, we note that the Hon'ble Karnataka High Court held that levy of fees u/s 234E while processing returns, TDS u/s 200A prior to 01.06.2015 was without any authority of law. With two divergent view of the Hon'ble High Courts on the issue and in the absence of any decision by the jurisdictional High Court, we concur with the learned Counsel for the assessee that as per the well accepted rule of construction, if two reasonable constructions of a statute are possible the construction which favours the assessee must be adopted. In view of the same, respectfully following the decision of the Karnataka High Court in the case of Fatheraj*

*Singhvi (Supra), we hold that the fees levied in all the present cases u/s 234E prior to 01.06.2015 in the intimations made u/s 200A was without authority of law and the same is therefore, directed to be deleted. In view of the above, all the appeals of the assessee stand allowed".*

*5. Respectfully following the same, assessee's appeals for both the AYs are allowed."*

9.3 In the case under consideration, on perusal of record, we find that the TDS returns filed by the assessee for the relevant period i.e., FY 2012-13 relevant to AY 2013-14 were prior to 01/06/2015. Therefore, respectfully following the said decision of the coordinate bench, we set aside the orders of CIT(A) and direct the AO to delete the fees levied u/s 234E in all the appeals under consideration.

9. In the result, all the appeals of the assessee are allowed.

Pronounced in the open court on 21<sup>st</sup> April, 2021.

**Sd/-**  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 21<sup>st</sup> April, 2021.

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*copy to :*

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| <i>1</i> | <i>Susheela Hospitals, H.No. 8-3-997/1,<br/>Engineers Colony, Srinagar Colony,<br/>Yousufguda, Hyderabad</i>          |
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| <i>3</i> | <i>CIT(A) - 4, Hyderabad</i>  |
| <i>4</i> | <i>CIT (TDS), Hyderabad</i>   |
| <i>5</i> | <i>ITAT, DR, Hyderabad.</i>   |
| <i>6</i> | <i>Guard File.</i>  |