

आयकर अपीलुड अधलकरण, इंदौर नुडडडडड, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
AND
HON'BLE MADHUMITA ROY, JUDICIAL MEMBER

Virtual Hearing

ITA Nos.640 to 642/Ind/2019
Jeevandhara Hospital Pvt. Ltd., Indore
PAN:AABCJ2121P
A.Y.: 2014-15(26, Q-1, Q-2 & Q-3)

Appellants by	Shri Subhash Chand Jain AR
Respondent by	Shri Harshit Bari, Sr. DR

Date of Hearing:	25.06.2021
Date of Pronouncement:	25.06.2021

आदेश / O R D E R

PER MANISH BORAD, A.M:

The above captioned appeals are at the instance of assessee and are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I, (in short 'CIT(A)') Indore dated 30.04.2019. As the issue raised in these appeals is similar, these were heard together and are being disposed of by this common order for the sake of convenience and brevity.

2. From perusal of the grounds we find that only one issue needs to be adjudicated as to whether the Revenue authorities were justified in levying the late fees u/s 234E of the Act while processing the statement of tax deducted at source u/s 200A of the Act before the amendment was brought in w.e.f. 01.06.2015 in the provisions of section 200A of the Act.

3. Brief facts common in these appeals are that the appellant was required to file the statement of tax deducted at source for the respective quarter but failed to do so within the due date prescribed in the law for filing such quarterly TDS returns. As per the provisions of section 234E of the Act, fee for default in furnishing the statement is leviable if the statement of TDS are not delivered within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act.

4. The revenue authorities have levied the late fees for default in furnishing the statement in the processing of statement of tax deducted at source prepared u/s 200A of the Act. Against the levy of late fee u/s 234E in the statement processed u/s 200A of the Act, appeal was preferred by the assessee for respective quarters for the respective assessment years before Ld. CIT(A) pleading that before the amendment was brought in by the

Finance Act, 2015 w.e.f. 01.06.2015, the revenue authorities were not having the power to levy the late fees u/s 234E of the Act in the statement processed u/s 200A of the Act.

5. However, assessee failed to succeed before Ld. CIT(A) and now is in appeals before the Tribunal raising the above referred common issue.

6. At the outset, Ld. counsel for assessee submitted that the common issue is squarely covered in favour of the assessee by the decisions of the Coordinate Bench in the case of State Bank of India, Genda Chowk and others dated 13.11.2018 and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/2017 & others, order dated 20.12.2018 and Bhupesh Kumar J. Sanghvi & others in ITANo.15/Ind/2018 & others, order dated 22.01.2019 wherein the similar issue has been adjudicated and decided in favour of the assessee.

7. Per contra Ld. Departmental Representative (DR) failed to controvert the submissions made by Ld. Counsel for the assessee.

8. We have heard the rival contentions and perused the record placed before us and carefully gone through various judgments referred and relied by the Ld. Counsel for above captioned

assessee. The common issue raised in these appeals is that whether the ld. CIT(A) was justified in confirming the levy of late fee u/s 234E of the Act in the statement of tax deducted at source processed u/s 200A of the Act, even when the amendment brought in the Finance Act 2015 was effective from 01.06.2015 which paved the way for levying the fee u/s 234E of the Act in the statement processed u/s 200A of the Act.

9. From perusal of the above issue we find that the same has been adjudicated by us in the case of State Bank of India, Genda Chowk and others dated 13.11.2018(supra) and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/2017 & others, order dated 20.12.2018(supra) and Bhupesh Kumar J. Sanghvi & others in ITANo.15/Ind/2018 & others, order dated 22.01.2019(supra) after examining similar facts as well as various judicial pronouncements. The revenue authorities failed to controvert the contention of Ld. counsel for the assessee that the common issue raised in these 3 appeals are squarely covered in favour of assessee by the decisions in the case of State Bank of India, Genda Chowk and others dated 13.11.2018(supra) and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/2017 & others, order dated 20.12.2018(supra)

and Bhupesh Kumar J. Sanghvi & others in ITANo.15/Ind/2018 & others, order dated 22.01.2019(supra) authored by us. Relevant portion of the decision given by us in the case of State Bank of India, Genda Chowk and others dated 13.11.2018 (supra) reads as follows:

9. We have heard the rival contentions and perused the record placed before us. The common issue raised in all these bunches of appeals is that whether the ld. CIT(A) was justified in confirming the levy of late fee u/s 234E of the Act in the statement of tax deducted at source processed u/s 200A of the Act, even when the amendment brought in the Finance Act 2015 w.e.f. 01.06.2015 paved the way for levying the fee u/s 234E of the Act in the statement processed u/s 200A of the Act.

10. We find that the above issue has consistently being adjudicated by the Coordinate Bench of the Tribunal and consistent view has been taken that the amendment brought in the Finance Act 2015 w.e.f. 01.06.2015 in clause (c),(d) & (e) of sub-section (1) of section 200A of the Act are prospective in nature, therefore, fee u/s 234E cannot be levied in the statement processed u/s 200A up to 31.05.2015.

11. Coordinate Agra Bench in the case of Sudarshan Goyal (supra) adjudicating very same issue observed as follows:

“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 dated 10.11.2013 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 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 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 I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 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), 'Shri Fatehraj Singhvi 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 Fatehraj Singhvi 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, I.T.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 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."

6. In view of the above, respectfully following 'Shri Fatehraj Singhvi 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."

12. Similarly Coordinate Jaipur Bench in the case of M/s. Mentor India Ltd. (supra) took the same view favouring the assessee observing as follows:

"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 Fatheraj Singhvi & 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 Dundlod Shikshan Sansthan 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. 2013-14 / 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 ld. Counsel. We find merit into the contention of ld. Counsel that he 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. Dundlod Shikshan Sansthan and Others (supra) as relied by ld. CIT (A). We have considered the recent decision of Hon'ble Karnataka High Court in the case of Shri Fatheraj Singhvi & 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 ld. 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 Dundlod Shikshan Sansthan Vs. 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 Fatheraj Singhvi & 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 Dundlod Shikshan Geeta 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 Rashmikant Kundalia 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 provide due to the late filing of the TDS statements. Hence from both the decisions relied upon by the ld. DR, the issue of power of imposing late fee is not decided but the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & 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 ld. AR of the assessee. If there is conflicting views taken by the two Hon'ble Courts, then the view, which favours the assessee should be adopted. In this regard, the ld 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."

13. We further find that the Coordinate Agra Bench in the case of State Bank of India, Gwalior (supra) again decided in favour of the assessee by following the decision in case of Sudarshan Goyal (supra) observing as follows:
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 on Group of SBI and Ors.

The decisions in the cases of '[CIT vs. Vatika Township Pvt. Ltd.](#) (2014) 367 ITR 466 (SC), '[Sudarshan Goyal vs DCIT \(TDS\)](#)' ITA No.442/Agr/2017 and Fatehraj Singhvi 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 '[Sudershan Goyal 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), 'Shri Group of SBI and Ors.

Fatehraj Singhvi 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 Fatehraj Singhvi 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 the Group of SBI and Ors. Deductor to reopen the said question unless he has made payment under protest."

6. In view of the above, respectfully following 'Shri Fatehraj Singhvi 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."

11. In the above view, respectfully following 'Shri Fatehraj Singhvi 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 'Sudershan Goyal' (Supra), we accept the grievance of the assesseees as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under [section 234E](#) of the Act is cancelled."

14. We, therefore, respectfully following the above referred decision of the Coordinate Bench consistently holding that in the intimation prepared u/s 200A of the Act up to 31st May 2015, the late filing fee u/s 234E of Act cannot be charged while processing the TDS return/statement because enabling clause (c) of sub-section (1) of section 200A have been inserted w.e.f. 01.06.2015 and before this amendment w.e.f 01.06.2015 there was no enabling provision in the Act u/s 200A of the Act for raising demand in respect of levy of fees u/s 234E of the Act.

15. We are of the considered opinion that in all these 56 appeals the ld. CIT(A) erred in confirming the levy of late fee u/s 234E of the Act. We, accordingly, set aside the findings of Ld. CIT(A) in all these appeals and allow the common issue in favour of the assessee.

10. We, therefore, in the given facts and circumstances of the case as well as following the decisions given by us in the case of State Bank of India, Genda Chowk and others dated 13.11.2018 (supra) and M/s. Madhya Pradesh Power Transmission Ltd. & others in ITA Nos.740/Ind/2017 & others, order dated 20.12.2018(supra) and Bhupesh Kumar J. Sanghvi & others in ITANo.15/Ind/2018 & others, order dated 22.01.2019(supra) are of the opinion that in the given set of facts of the instant

appeals wherein fee u/s 234E of the Act was levied in the statements processed u/s 200A of the Act before 01.06.2015 i.e. before the amendment brought into effect from 01.06.2015 in section 200A of the Act thereby enabling the revenue authorities to raise demand in respect of levy of fees u/s 234E of the Act. Ld. CIT(A) erred in confirming the levy of late fees u/s 234E of the Act by the assessing officer. Accordingly findings of ld. CIT(A) in all these three appeals are reversed and revenue is directed to delete the levy of fees u/s 234E of the Act in these three cases. Thus, common issue raised in these appeals is decided in favour of the assessee.

11. In the result, these three appeals ITANos.640 to 642/Ind/2019 at the instance of assessee are allowed.

Order was pronounced in the open court on 25 .06.2020.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 25/06/2020

Patel. P. S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar, Indore