

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA Nos. 36 &37/Ahd/2019
Assessment Year 2013-14 & 2014-15**

Blue River Realty Pvt. Ltd. 2, Rangoli Complex, Opp. V.S. Hospital, Ellisbridge, Ahmedabad-380006 PAN: AHMB04309E (Appellant)	Vs	ACIT, CPC-TDS, Gaziabad (Respondent)
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**Revenue by: Dr. Shyam Prasad, Sr. D.R.
Assessee by: Shri S.V. Agarwal, A.R.**

Date of hearing : 29-07-2021
Date of pronouncement : 30-07-2021

आदेश/ORDER

PER BENCH:-

These two appeals filed by the assessee for A.Y. 2013-14 & 2014-15, arise from order of the CIT(A)-8, Ahmedabad dated 18-04-2018, in proceedings under section 200A of the Income Tax Act, 1961; in short "the Act".

2. The solitary ground of appeal of the assessee is directed against the order of Id. CIT(A)-8 Ahmedabad in confirming the levy of late filing fees for form 26Q and form 24Q of Financial Year 2012-13 and 2013-14 u/s. 200A r.w.r. 234E of the I.T. Act.

3. The brief fact of the case is that ACIT CPC TDS, Gaziabad, the Assessing Officer has levied fees u/s. 234E of the Act for delay in furnishing the submission of tax deduction at source and levied fees u/s. 234E of the Act to the amount of Rs. 89,065/-

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee after referring the decision of Hon'ble Jurisdictional High Court in the case of Rajesh Kourani Vs. Union of India (2017) 83 taxmann.com 137 (Guj). The relevant part of the decision of Id. CIT(A) is reproduced as under:-

"5.1 I have carefully gone through the facts of case and the submissions made, Provisions of sub section 3 of Section 200 of the Act require any person deducting tax at source to prepare the prescribed statement and deliver or cause to be delivered the same to the prescribed Authority within the given time, the forms for such statements are prescribed in Rule 31A of the Income Tax Rules, 1962- Section 200 A of the Act enumerates the manner of processing of such statements and section 234E of the Act inserted by Finance Act ,2012 w.e.f. 1.7.2012 provides for levy of fees for default in furnishing the statements under sub section 3 of section 200 of the Act . In section 200A which deals with processing of the prescribed Statements, the specific provision for levy of fee under section 234E was inserted w.e.f. 1.6, 2015. The grievance of the appellant is that although section 234E came into effect w.e.f. 1.7.2012 but since the enabling provision for computation of fee while processing the statements was inserted in Section 200A only w.e.f. 1.6.2015, the charging section i.e. section 234 E cannot be enforced prior to 1.6.2015.

*5.2 On plain reading of Section 234E, it is clear that this is charging section and Section 200A(1) is a machinery section. Charging section cannot be subservient to the machinery section. Further, I find that this view has also been upheld by the Hon'ble jurisdictional High Court in the case of **Rajesh Kourani vs. Union of India (2017) 83 taxmann.com 137 (Gujarat)**, judgment delivered on 20.06.2017. In this case, the Hon'ble Gujarat High Court while comprehensively dealing with the issue have clearly held **that** under no circumstances a machinery provision can override the charging provision. Relevant part of the decision is reproduced as below: -*

"19. In plain terms, section 200A of the Act is machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustment, which are as noted earlier, arithmetical or prima-facie in nature. With effect from 01.06.2015, this provision specifically provides for computing the fee payable under

section 234E of the Act. On the other hand, section 234E is a charging provision creating a charge for levying fee for certain default in filing the statements. Under no circumstances a machinery provision can override or overrule a charging provision. We are unable to see that section 200A of the Act creates any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When section 234E has already created a charge for levying fee that would thereafter not been necessary to have yet another provision creating the same charge. Viewing section 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision in our understanding is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under section 234E for late filing of the statements. 20. Even in absence if section 200A of the Act with introduction of section 234E, it was always open for the Revenue to demand and collect the fee for late filing of the statement. Section 200A would merely regulate the manner in which the computation of such fee would be made and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being found for section 200A for computation of fee, the fee prescribed under section 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, the recasted clause (c) of sub section (1) of section 200A would be in nature of clarificatory amendment Even in absence of such provision, as noted, it was always open for the Revenue to charge the fee in terms of section 234E of the Act. By amendment, the adjustment was brought within the fold of section 200A of the Act. This would have one direct effect. An order passed under section 200A of the Act is rectifiable under section 154 of the Act and is also appealable under section 246A. in absence of the power of authority to make such adjustment under section 200A of the Act, any calculation of the fee would not partake the character of the intimation under said provision and it could be argued that such an order would not be open to 'any rectification or appeal. Upon introduction of the recasted clause (c), this situation also would be obviated. Even prior to 01.06.2015, it was always open for the Revenue to calculate fee in terms of section 234E of the Act. The Karnataka High Court in case of Fatheraj Singhvi (supra) held that the section 200A was not merely a regulatory provision, but was conferring substantive power on the authority. The court was also of the opinion that section 234E of the Act was in the nature privilege to the defaulter if he fails to pay fees then he would be rid of rigor of the penal provision of section 271H of the Act. With both these propositions, with respect, we are unable to concur. Section 200A is not a source of substantive power. Substantive power to levy fee can be traced to section 234E of the Act. Further the fee under section 234E of the Act is not in lieu of the penalty of section 271H of the Act. Both are independent levies. Section 271H only provides that such penalty would not be levy if certain conditions are fulfilled- One of the conditions is that the tax with fee and interest is paid. The additional condition being that the statement is filed within one year from the due date.

21. counsel for the petitioner however, referred to the decision of Supreme Court in case of CIT v. B. C. Srinivasa Setty [1981] 128 ITR 294/5 Taxman 1 (SC), to contended that when a machinery provision is not provided, the levy itself would fail. The decision of Supreme Court in case of B C. Srinivasa Setty (supra) was rendered in entirely different background. Issue involved was of charging capital gain on transfer of capital asset In case on hand, the asset was in the nature of goodwill. The Supreme Court referring to various provision concerning charging and computing capital gain observed that none of the these provisions suggest that they include an asset in the acquisition of which no cost can be conceived. In such a case, the asset is sold and the consideration is brought to tax, what is charged is a capital value of the asset and not any profit or gain. This decision therefore would not apply in the present case."

The judgment of Hon'ble ITAT relied upon by the appellant in the case of Tanish Industries Pvt. Ltd (Supra) was delivered to prior to the judgment of Hon'ble High Court. In view of the above clear position of law and respectfully following the decision of Hon'ble jurisdictional

*High Court in the case of Rajesh Kourani (supra) it is held that fees levied by the AO under the provisions of section 234E of the Act is correct and appeals on this ground are **dismissed.***

5. Heard both the sides and perused the material on record. It is undisputed fact that assessee has made delay in furnishing submission of tax deduction at source as prescribed under rule 31A of Income Tax Rule, 1962. Considering the decision of Hon'ble Gujarat High Court as elaborated in the case of Id. CIT(A), we do not find any error in the decision of Id. CIT(A), therefore, the appeal of the assessee is dismissed.

ITA No. 37/Ahd/2019 A.Y. 2014-15

6. As the facts and issues involved in the appeal vide ITA No. 36/Ahd/2019 Assessment Year 2013-14 are similar as in ITA No. 37/Ahd/2019 Assessment Year 2014-15 therefore after applying the decision adjudicated vide ITA No. 36/Ahd/2019 as supra in this order, this appeal of the assessee is disallowed.

7. In the result, both the appeals filed by assessee are dismissed.

Order pronounced in the open court on 30-07-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 30/07/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद