

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "G" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER &
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.2311/Del/2017
Assessment Year : 2015-16**

M/s Vkare Bio Sciences Pvt. Ltd. C/o- L. K. Arora & Co. (Tax Advocate), E-36/305, 3 rd Floor, Jawahar Park, Vikas Marg, Laxmi Nagar, Delhi-110092	vs	The DCIT, TDS-CPC, Aaykar Bhawan, Sector-3 Vaishali, Ghaziabad, U.P. 201010
PAN-AAECV1010E		
APPELLANT		RESPONDENT

Appellant by	None
Respondent by	Sh. Prakash Dubey, Sr. DR
Date of Hearing	21.09.2021
Date of Pronouncement	23.09.2021

ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 23.01.2017 of the learned CIT(A)-41, New Delhi, arising from the order passed u/s 200A of the Income Tax Act, 1961 (hereinafter 'the Act') for the Assessment Year 2015-16 (Quarter -4 of Financial Year 2014-15).

2. The assessee has raised following grounds of appeal:-

1. *That no opportunity of being heard or any show cause notice whatsoever has been afforded to the assessee before giving the notice of penalty under section 234E which is against the principle of natural justice and inconsistent with the various pronouncements given by the Courts.*
2. *That the quantum of late fees enforced on the appellant is confiscatory in nature of a part of their income as the assessee have been penalized in disproportionate level despite of payment of tax on due dates.*
3. *That no inconvenience has been caused to the tax deducted since the amount was show in his 26AS at the time of return and also the department got time credit of the tax. Thus penalty levied is gigantic and harsh.*
4. *That the assessee's advocate forgot to file the return of the applicant due to which there was delay in filing the TDS return for the given quarter.*
5. *That neither the assessee has tried to avoid tax nor financial loss has been suffered due to late filing of return in Form 26Q.*
6. *That the assessee has clean history and have lawfully filed the returns on or before the due date in the previous quarter(s). Therefore, taking into consideration the consistency in the past and no financial loss to the Department, a nominal delay for submission of return should be excused.*
7. *As per the provisions of Sec. 234F1 made applicable w.e.f. 1st July, 2012 states that "Amount of late fee shall be paid before delivering a TDS statement". Thus', it means that any late fee should have been deposited just at the time of delivering TDS statement and not later than this. The*

authorized TIN- NSDL centre which accepted the TDS statement also accepted these without late fee, as well as the software utility of the TDS department itself accepted these without late fee. Once the TDS statement has been accepted without late fee, then such late fee cannot be recovered later on. TDS statement late fee cannot be recovered for F.Y. 2013-14, as it is not collected at the time of delivering TDS statement to the department.

8. **AS PER FINANCE ACT 2015 applicable w.e.f 01.06.2015**, “Sub-section (1) of Sec. 200A is amended to provide that statement of tax deduction at source or correction statement made u/s. 200 shall be processed and sum deductible under Chapter XVII shall be computed after also taking into account the fee, if any, payable in accordance with the provisions of section 234E. The sum payable or refundable shall be determined after adjusting the aforesaid computed sum against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee. ”
- Referring to Finance Act, 2015, attention is drawn to your good self that with effect from 01.06.2015, the Parliament by way of amendment to Section 200A of the Act empowered the Assessing Officer to levy fee under Section 234E of the Act while processing under Section 200A of the Act.
 - Therefore, according to the Finance Act, 2015, prior to 01.06.2015, your good self had no authority to levy fee, if any, under Section 234E of the Act and thus levy of fee under Section 234E of the Act while processing the statement is beyond the scope of Section 200A of the Act.
 - Thus, the demand raised by the Ld. Assessing officer which relates to the Section 234E which is charged as late filing of return charging Rs. 200 per day is unjustified and should be deleted.

3. The assessee has challenged late filing fee of quarterly TDS return in form no.26Q while issuing the process u/s 200A of the Act on 30.06.2015. The Ld. AR of the assessee has submitted that during the Financial Year 2014-15, the assessee has deducted TDS on certain expenses and deposited the same in the government account but unfortunately due to the mistake of staff of the counsel it forgot to file the TDS return in time and it was admittedly file belatedly on 27.06.2015. Therefore, there was a delay of 43 days in filing the TDS return, which was processed by the Assessing Officer/CPC TDS on 30.06.2015, thereby an adjustment on account of late filing fee u/s 234E of Rs.8600/- was made. The Ld. AR has submitted that TDS deducted by the assessee and deposit in government account pertains to FY 2014-15 therefore, the Assessing Officer had not power to make an adjustment while processing the TDS return u/s 200A of the Act prior to amendment in the statute w.e.f. 01.06.2015 enabling the Assessing Officer to make such adjustment. The period for which TDS was deducted and return filed for the period prior to the amendment u/s 200A of the Act and hence the late filing fee u/s 234E of the Act while issuing

intimation u/s 200A of the Act is unjustified and unwarranted for want of jurisdiction of the Assessing Officer. In support of his contention, he has relied upon by the decision of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi & Ors. vs UOI reported in 289 CTR 602(Karn.). He has further submitted that the Delhi Benches of this Tribunal in assessee's own case in ITA No.2308 to 2039/Del/2017 for the AY 2015-16 vide order dated 18.04.2017 has cancelled the levy of late filing fee u/s 234E of the Act. The Ld. AR has also relied the following decisions:-

- i. M/s Mivmit Metals and Infrastructure Private Limited vs DCIT (ITA No.41 & 42/JP/2018).
- ii. M/s Dollars & Pounds vs ACIT (ITA No.2015/Chny/2018, 2020/Chny/2018, 2021/Chny/2018, 2018/Chny/2018, 2019/Chny/2018 and 2030/Chny/2018).
- iii. Shri Uttam Chand Gangwal M/s Adinath Stones vs ACIT, PC(TDS) (ITA No.764/JP/2017)
- iv. M/s Madhya Pradesh Power Transmission Ltd. & Ors. vs DCIT (ITA No.740 & 741/Ind/2014)
- v. Naunehal Primary School Mill Area Nanded vs JCIT, (SA Nos.104 & 105/Pun/2018 arising out of ITA Nos. 1423 & 1489/Pun/2018)

4. Thus, the Ld. AR has submitted that the levy of late filing fee u/s 234E of the Act while processing TDS return u/s 200A is unjustified and the same should be deleted.

5. On the other hand, the Ld. DR has submitted that the amendment in section 200A w.e.f. 01.06.2015 is purely procedural in nature and therefore, the Assessing Officer was duly empowered and authorized to levy the penalty while passing the impugned order subsequent to the amendment brought into statute. He has relied upon the order of the Ld. CIT(A) and submitted that the Ld. CIT(A) has followed various decisions of the Hon'ble High Courts wherein, the validity of section 234E of the Act was upheld.

6. We have considered the rival submission and perused the relevant material on record. In the case in hand, the assessee filed quarterly TDS return for the 4th quarter of Financial year 2014-15 relevant to the AY 2014-15 in Form No.26Q on 27.06.2015 belatedly of 43 days after due date. The said quarter return was processed u/s 200A of the Act on 30.06.2015 whereby an adjustment was made on account of late

filing fee u/s 234E of the Act of Rs.8600/-. So far as the levy of late filing fee u/s 234E of the Act is concerned, this is mandatory and consequential, however, prior to the amendment in section 200A w.e.f. 01.06.2015, the Assessing Officer was not having the power to make such adjustment on account of late filing fee. In the case, in hand, there is no dispute that the quarterly TDS was filed on 27.06.2015 and was processed on 30.06.2015 and both these events happened after the amendment was brought in the statute w.e.f. 01.06.2015 enabling the Assessing Officer to make adjustment on account of late filing fee u/s 234E of the Act. The Hon'ble Karnataka High Court in the case of Fatehraj Singhvi & Ors vs UOI (supra) has held that the amendment in section 200A has come into effect on 01.06.2015 and having prospective effect. Therefore, there could not be any levy of fee for late filing fee u/s 234E of the Act while issuing intimation u/s 200A prior to 01.06.2015. Relevant finding of the Hon'ble Karnataka High Court is as under:-

“26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act

before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.”

7. Thus, the Hon'ble High Court has held amendment u/s 200A of the Act is prospective in nature and therefore no computation of fee for demand or intimation u/s 200A could be made for the TDS deducted for the respective Assessment Years prior to 01.06.2015. It is pertinent to note that the delay in filing the statement upto 01.06.2015 would not attract the provisions of section 234E of the Act so far as the adjustment to be made while processing the TDS return u/s 200A of the Act, as the amendment in the said section has been brought w.e.f. 01.06.2015 enabling the Assessing Officer to make adjustment

on account of late filing fee u/s 234E of the Act. Therefore, the Assessing Officer was having no jurisdiction or authority to levy the fee for delay of period prior to 01.06.2015. In the case, in hand, since the delay is continuous and beyond to the amendment w.e.f. 01.06.2015 and therefore, once the provisions of section 234E r.w.s 200A of the Act are applicable w.e.f. 01.06.2015, the delay from that date onwards will attract the levy of late filing fee. Undisputedly, the default in submitting the TDS return in Form No.26Q continued even after the amendment w.e.f. 01.06.2015 and therefore, the delay from the period 01.06.2015 till filing of fee TDS return on 27.06.2015 will attract the levy of late filing fee u/s 234E while processing TDS return u/s 200A of the Act. We may clarify that the decisions relied by the Ld. AR of the assessee are on the point that the TDS return processed u/s 200A prior to 01.06.2015 would not attract the provisions of section 234E of the Act as the Assessing Officer was not having any power to make such adjustment prior to the amendment w.e.f. 01.06.2015. Accordingly, we modify the impugned orders of the Assessing Officer as well as of the Ld. CIT(A) and direct the Assessing Officer to compute the late

filing fee u/s 234E of the Act for a delay w.e.f. 01.06.2015 till the filing of the TDS return.

8. In the result, the appeal of the assessee is partly allowed.

Above decision was pronounced in the open court on conclusion of Virtual Hearing on 24.09.2021.

Sd/-

**(R.K.PANDA)
ACCOUNTANT MEMBER**

Delhi/Date 24.09.2021

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(VIJAY PAL RAO)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI