

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
& MS. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2432/Ahd/2018

(निर्धारण वर्ष / Assessment Year: 2014-15(26Q, Q1))

M/s. Orion Steel Corporation 58, Ajanta Station Road, Anand, Gujarat-388001	बनाम/ Vs.	The ACIT Centralized Processing Cell-tax deducted at source, Income Tax Office, Sector-3, Vaishali, Ghaziabad, Uttar Pradesh-201010
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAFO3831D		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	None
प्रत्यर्थीकीओरसे / Respondent by:	Shri Purushottam Kumar, Sr. DR

सुनवाईकीतारीख/Date of Hearing	07/10/2021
घोषणाकीतारीख /Date of Pronouncement	27/10/2021

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the Assessee for A.Y. 2014-15 (26Q, Q1), arise from order of the CIT(A) –5, Vadodara dated 13.06.2018, in proceedings under Section 200A r.w.s. 154 of the Income Tax Act, 1961; in short “the Act” with the following grounds:-

“1. The Commissioner of Income-Tax (Appeals)-5, Vadodara [“the CIT(A)”] erred in fact and in law in confirming the action of Assistant Commissioner of Income Tax, (“the AO”) in leaving late filing fee Rs. 48,600/- of the Income Tax Act, 1961 (“the Act”) in spite of the fact that prior to 1st June 2015 there was no enabling provision in the Act for raising a demand of levying fees u/s. 234E and adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A.

2. The learned Commissioner of Income-Tax (Appeals)-5, Vadodara [“the CIT(A)”] has erred in facts and in law in conforming the action of the AO in charging interest u/s 220(2) of

the Income tax act, 1961 when the demand itself does not subsists in view of above ground of appeal.”

Ground No.1:-

2. The facts of the case are that the assessee had filed its TDS statement in Form No. 26Q for A.Y. 2014-15 (Quarter-1) which was processed under Section 200A on 24.03.2014 charging late fees under Section 234E at Rs. 48,600/-. Against the order passed under Section 200A r.w.s. 154 by CPC Ghaziabad, the assessee filed appeal before the Ld. CIT(A)-5, Vadodara. The Ld. CIT(A) has dismissed the appeal of the assessee in view of the decision of Jurisdictional High Court of Gujarat in the case of Rajesh Kourani vs. Union of India (2017) 83 taxmann.com 137 (Guj.).

3. Heard the Ld. DR and perused the material available on record, without reiterating the facts as stated above the Ld. CIT(A) has sustained the late fee of Rs. 48,600/- levied under Section 234E of the Income Tax Act, 1961. Section 234E is a charging provision creating a charge for levying fees for certain defaults in filing statements, and fees prescribed under Section 234E could be levied even without regulatory provision being found in Section 200A for computation of fees. Section 234E prescribes for charging of a fee for everyday of default in filing statement under sub-section 3 of Section 200 or in Proviso to sub-Section (3) of Section 206 of the Act. The Hon'ble Jurisdictional High Court of Gujarat in the case of Rajesh Kourani vs. Union of India (2017) 83 taxmann.com 137 (Guj.) held that Section 200A is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustment, on the other hand, Section 234E is a charging provision creating a charge for levying fee for certain default in filing the statement. The Hon'ble High Court also held that under no circumstances a machinery provision can override or overrule a charging provision. Respectfully following the decision of the Hon'ble Jurisdictional High Court as Rajesh Kourani vs UOI (supra) we do not find any infirmity in the

decision of Ld. CIT(A). Therefore, this ground of appeal of the assessee stand dismissed.

Ground No.2:-

4. This ground relates to charging interest under Section 220(2) of the Act.

5. The assessee has filed appeal before the Ld. CIT(A) against charging interest under Section 220(2) of the Act. The Ld. CIT(A) has dismissed the ground of appeal of the assessee holding that charging of interest under Section 220(2) is a consequential in nature and since no relief is granted in the quantum of demand, this become infructuous. In view of the provision of Section 220(2) which is of consequential nature we consider that decision of Ld. CIT(A) is justified. Therefore, this ground of appeal of the assessee is also dismissed.

6. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on 27/10/2021

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Ahmedabad: Dated 27/10/2021

TANMAY

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

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।