

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
(Through Video Conferencing)**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 4698/Del/2018
Asstt. Year 2014-15

Shakuntala Gupta, C/o RRA TAxIndia, D- 28, South Extension, Part-1 New Delhi – 110 049 PAN ACJPG5891Q (Appellant)	Vs.	ACIT, CPC-TDS Ghaziabad. (Respondent)
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Assessee by:	Shri Somil Agarwal, Advocate
Department by :	Shri Bhopal Singh, Sr. DR
Date of Hearing	03/11/2021
Date of pronouncement	10/11/2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 21.5.2018 passed by the CIT (A)-Faridabad for Assessment Year 2014-15.

2. The grounds of appeal are as under :-

1. *“That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 201 for a sum of Rs. 18,348/-.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 234E amounting to Rs.94,909/- on account of late filing fee of TDS statement.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 220(2) for a sum of Rs. 16,800/-.*
4. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in initiating the action for recovery u/s 222 to 227, 229 and 232 of the Income tax Act, 1961.*
5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. The assessee alongwith other two co-owners namely, Smt. Meghna Gupta & Smt. Himani Gupta purchased a property from 8 persons to each of whom an amount of Rs. 41,87,500/- was paid. Later on department issued intimation-cum-demand notice u/s 200A of the I.T.Act,1961 and thereby raised following demands :-

u/s 201	Rs. 18,348/-
u/s 234E	Rs. 94,909/-
u/s 220(2)	Rs. 16,800/-

Total Rs. 1,30,057/-

The AO made demand of Rs. 1,30,057/- u/s 201, u/s 234E & u/s 220(2) through rectification order u/s 200A.

4. Being aggrieved by the order u/s 154/200A of the Income Tax Act, the assessee filed an appeal before the CIT(A). CIT(A) dismissed the appeal of the assessee.

5. Ld. AR submitted that the issue is decided in favour of co-owners of the said property by the Tribunal in ITA No. 2649/Del/2018 (Meghna Gupta vs. ACIT, CPC-TDS order dated 01.10.2018) and ITA No. 4697/Del/2018 (Himani Gupta vs. ACIT CPC, TDS order dated 08.09.2021). Thus the issue is covered in favour of the assessee.

6. Ld. DR relied upon the order of the CIT(A) and assessment order.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the issue contested in this appeal has already been decided in favour of the assessee's co-owners of the said property which is the issue

before us. The Tribunal in case of Meghna Gupta (supra) held as under:

“6. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. At the outset, from the perusal of the rectification order u/s 200A generated by TDS (CPC), it is noticed that the TDS in 26QB mentions date of filing of 'challan cum statement' as 5.4.2014, wherein late filing of 'challan cum statement' u/s 234E has been levied. The assessee had purchased the property on 6.12.2013 i.e., relevant to the assessment year 2014-15. Since assessee had purchased the property from eight sellers and the payment to each of the seller has been made separately for an amount of Rs. 41,87,500/- aggregating to Rs. 3,35,00,000/-, the assessee's contention has been that it was not required to deduct TDS, because the payments made to each seller was less than the prescribed limit of Rs.50 lacs and therefore, provision of section 194IA was not applicable. The demand has been raised by the department u/s 200 in terms of failure to comply with Section 200A, which deals with the processing of statement of tax deducted at source u/s 200. First of all, sub section 3 of section 200 provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:-

"(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"

6.1 Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A(4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. As stated above, the assessee has duly deposited the tax not at the time of purchase albeit on 5.4.2014 and on the same date, statement has also been filed. The relevant provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi & Ors vs. Union of India* reported in (2016) 289 CTR 0602, wherein the lordship had made following observations :-

"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the

returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made."

7. Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled.

8. Similarly interest u/s 220(2) cannot be levied when fee u/s 234E itself is not leviable. In so far as charging of interest u/s 201(IA), the same cannot be charged as admittedly no order u/s 201(1) has been passed holding the assessee to be "assessee in default" and, therefore, such an interest is also deleted."

No distinguishing facts were placed before us by the Revenue.

Therefore, we are allowing the appeal of the assessee.

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

Order pronounced in the open court in presence of both the parties on 10th November, 2021.

**sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 10/11/2021

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi