IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R.BASKARAN, ACCOUNTANT MEMBER

Sl.No.	ITA No.	AY	PERIOD	AMOUNT
1.	437/Bang/2021	2013-14	Q2, Q3 & Q4	Rs.2,90,200
2.	438/Bang/2021	2013-14	Q2, Q3 & Q4	Rs.2,90,200
3.	439/Bang/2021	2013-14	Q2, Q3 & Q4	Rs.2,90,200
4.	440/Bang/2021	2014-15	Q1, Q2,Q3 & Q4	Rs. 95,200
5.	441/Bang/2021	2014-15	Q1, Q2,Q3 & Q4	Rs. 95,200
6.	442/Bang/2021	2014-15	Q1,Q2,Q3 & Q4	Rs. 95,200
7.	443/Bang/2021	2014-15	Q1,Q2,Q3 & Q4	Rs. 95,200
8.	444/Bang/2021	2015-16	Q1,Q2,Q3 & Q4	Rs.1,26,400
9.	445/Bang/2021	2015-16	Q1,Q2,Q3 & Q4	Rs.1,26,400
10.	446/Bang/2021	2015-16	Q1,Q2,Q3 & Q4	Rs.1,26,400
11.	447/Bang/2021	2015-16	Q1,Q2,Q3 & Q4	Rs.1,26,400

M/s. Navarang Diagnostics Pvt. Ltd., No.159, 3rd Main, Margosa Road, Malleshwaam, Bengaluru – 560 003. **PAN: AABCN 7565 P** **TAN: BLRNO 2469 F**	Vs.	ITO, TDS Ward – 2(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. G. S. Prashanth, CA
Respondent by	:	Shri. Swaroop Mannava, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	15-11-2021
Date of Pronouncement	:	15-11-2021

O R D E R

Per Bench

These are a batch of 11 appeals filed by Assessee against 11 different orders all dated 23.7.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi, relating to assessment years 2013-14 to 2015-16.

2. The assessee filed statement of tax deducted at source (TDS) for various quarters in Form No.24Q/26Q/ for AY 2013-14 to 2015-16. The statement was processed by the respondent. There was a delay in filing the above TDS statement and therefore the AO by intimation u/s. 200A of the Income-Tax Act, 1961 ["the Act"] levied late fee u/s. 234E of the Income-Tax Act, 1961 ["the Act"]. Under Sec.234E of the Act, if there is a delay in filing statement of TDS within the prescribed time then the person responsible for making payment and filing return of TDS is liable to pay by way of fee a sum of Rs.200/- per day during which the failure continues. Section 234E of the Act inserted by the Finance Act, 2012 w.e.f. 1.7.2012. reads as follows:-

> "Fee for default in furnishing statements.
>
> 234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of **section 200** or the proviso to sub-section (3) of **section 206C**, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.
>
> (2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.
>
> (3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.
>
> (4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

3. Aggrieved by the aforesaid orders, the assessee filed appeals before the NFAC /CIT(A). The assessee's contention before CIT(A) was that the provisions of section 234E of the Act was inserted by the Finance Act, 2012 w.e.f. 1.7.2012. Section 200A of the Act is a provision which deals with how a return of TDS filed u/s.200(3) of the Act has to be processed and it reads as follows:-

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(*a*) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(*i*) any arithmetical error in the statement; or

(*ii*) an incorrect claim, apparent from any information in the statement;

(*b*) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

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

(*d*) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (*b*) and clause (*c*) 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;

(*e*) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (*d*); and

(*f*) the amount of refund due to the deductor in pursuance of the determination under clause (*d*) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.— For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(*i*) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(*ii*) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

4. Clause (c) to (f) of section 200A(1) was substituted by the Finance Act, 2015 w.e.f. 1.6.2015. The assessee contended before NFAC (CIT(A)/first appellate authority) that AO could levy fee u/s.234E of the Act while processing a return of TDS filed u/s.200(3) of the Act only by virtue of the provisions of Sec.200A(1)(c), (d) & (f) of the Act and those provisions came into force only from 1.6.2015 and therefore the authority issuing intimation u/s. 200A of the Act while processing return of TDS filed u/s.200(3) of the Act, could not levy fee u/s. 234E of the Act in respect of statement of TDS filed prior to 1.6.2015. The assessee, thus, challenged the validity of charging of fee u/s. 234E of the Act. The assessee relied on the decision of the Hon'ble High Court of Karnataka in the case of *Fatehraj Singhvi v. UOI [2016] 73 taxmann.com 252* wherein the Hon'ble Karnataka High Court held that amendment made u/s. 200A providing that fee u/s. 234E of the Act could be computed at the time of processing of return and issue of intimation has come into effect only from 1.6.2015 and had only prospective effect and therefore, no computation of fee u/s.234E of the Act for delayed filing of return of TDS while processing a return of TDS u/s.234E of the Act could have been made for tax deducted at source for the assessment years prior to 1.6.2015.

5. The NFAC/CIT(Appeals) agreed with the contention that the issue has been decided by the Hon'ble Karnataka High Court in favour of the Assessee in the case of Fatehraj Singhvi (supra). He however found that the Madras High Court in the case of Qatalys Software Technologies Vs. Union of India W.P. No.1331 of 2019 dated 11.3.2020, the Hon'ble Kerala High Court in the case of Sree Narayan Guru Smaraka Sangam Vs. UOI WP (C) No.30229 of 2013 order dated 14.12.2016 and Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. UOI (2017) 83 taxmann.com 137 (Guj) have taken a view that even in the absence of Sec.200A of the Act with introduction of Sec.234E of the Act it was always open to the revenue to demand and collect fee for late filing of statement of TDS and that Sec.200A merely regulates the manner in which the computation of such fee would be made and demand raised. The NFAC/CIT(A) therefore upheld the levy of interest u/s.234E of the Act.

6. Aggrieved by the order of the CIT(A), the Assessee has preferred appeals before the Tribunal. We have heard the submission of the learned counsel for the Assessee who submitted that the decision of the Hon'ble Karnataka High Court being the decision of the jurisdictional High Court ought to have been followed by the NFAC. The learned DR reiterated the stand of the revenue as reflected in the order of the CIT(A).

7. We have considered the submissions of the learned DR and also the grounds of appeal filed by the Assessee. It is not in dispute that if the ratio laid down by the Hon'ble Karnataka High Court in the case of *Fateeraj Singhvi (supra)* is applied then the levy of interest u/s.234-E of the Act would be illegal for returns of TDS in respect of the period prior to 1.6.2015. The present appeals of the Assessee relate to TDS returns filed prior to 1.6.2015 and therefore levy of interest u/s.234E of the Act would not be valid, following the ratio laid down by the Hon'ble Karnataka High Court.

8. It is no doubt true that three Hon'ble High Courts of Madras, Gujarat and Kerala, have taken a contrary view to the view taken b y the Hon'ble Karantaka High Court in the case of Fateeraj Singhvi (supra). If there is conflicting views rendered by different High Courts, the view taken by the jurisdictional High Court is binding in the jurisdictional area of the respective High Court. The Hon'ble Bombay High Court in the case of **Subramaniam -vs.- Siemens India Ltd. (1985) 156 ITR 11 (Bom.)** held that **in the case where there is conflict of views between different High Courts, authorities must follow the decision of the High Court within whose jurisdiction he is functioning**. The Court further added that in cases where there is a conflict between the decisions of non-jurisdictional High Courts, the ITO must take the view which is in favour of the assessee and not against him. In **CIT -vs.- Sunil Kumar (1996) 212 ITR 238 (Raj.)** it was held that the decision of the Jurisdictional High Court is binding on the Income tax Authorities and the Tribunal within the jurisdiction of the Court and the contrary decision of another High Court is not relevant, and that a point decided by the Jurisdictional High Court can no longer be considered to be a debatable issue. In **Baradakanta Mishra -vs.- Bhimsen Dixit AIR 1972 SC 2466** it was held as follows:

> *"It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that court and start proceedings in direct violations of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer."*

9. In the case of Mahadev Cold Storage Vs. AO ITA No.41 & 42/Agr/2021 order dated 14.6.2021, it was held that although a centralized NFAC had been created by the notifications, it had to be ensured that where an appellate order was passed by the NFAC, the decision of the jurisdictional high court with jurisdiction over the AO should be

followed and applied by the NFAC. Relief should not be refused to the taxpayer merely because there was a conflicting decision of a non-jurisdictional high court. It was held that an appeal against the decision of the Agra ITAT would be before the Allahabad High Court; therefore, the decision rendered by that court was binding not only on the ITAT but also on the NFAC (notwithstanding that it is was sitting in Delhi) that was deciding the issue pertaining to the jurisdiction of the Agra ITAT and hence the Allahabad High Court. The NFAC was bound by the binding decision of the jurisdictional High Court, where the AO was situated.

10. In the light of the above discussion, we are of the view that the levy of interest u/s.234E of the Act in the present case cannot be sustained and the same is directed to be deleted and the appeals of the Assessee are allowed.

11. In the result, the appeals are allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(B.R.BASKARAN)	**(N. V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated, the 15th November, 2021.

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Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.