

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER) AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)**

**ITA No. 1883/MUM/2019
Assessment Year: 2014-15**

Highway Restaurant,
1, Sadguru Vasahat, Near Gurunanak
Industrial Estate, Goregaon (East),
Mumbai-400063.

PAN No. AAAPH 1353 B

Appellant

Vs. DCIT, CPC-TDS,
TDS CPC, Aayakar Bhavan,
Sector-3, Vaishali, Ghaziabad,
UP-201010.

Respondent

Assessee by : None
Revenue by : Mr. Vinay Kaushal, DR

Date of Hearing : 01/12/2021
Date of pronouncement : 02/12/2021

ORDER

PER AMARJIT SINGH, A.M.

The sole ground of appeal is directed against the order of Commissioner of Income Tax (Appeals)-59, Mumbai confirming the action of the Deputy Commissioner of Income Tax, CPC-TDS in levying late fees u/s 234E of the Act to the amount of ₹10,400/-.

2. At the outset, it is noticed that none appeared on behalf of assessee in spite of calls and even no application for adjournment was moved. On the other hand, Ld. DR is present in the court and is ready with arguments. Therefore, we have

decided to proceed with the hearing of the case *ex-parte* with the assistance of the Ld. DR and the material placed on record.

3. The fact in brief that the assessee has filed TDS statement for the quarter 4 (January 2014-March 2014) on 30.09.2014. The Deputy Commissioner of Income Tax, CPC-TDS has served an intimation u/s 200A of the Act to the assessee on 30.12.2015 and levied late fees for filing TDS statement u/s 234E of the Act for assessment year 2014-15.

4. Aggrieved, the assessee filed an appeal before Ld. CIT(A) and Ld. CIT(A) dismissed the appeal of the assessee stating that the assessee has made delay in filing the appeal and proper reason for the delay was not substantiated.

5. Heard the Ld. DR and perused the material on record. Without reiterating the facts as elaborated above the Assessing Officer has levied late fees u/s 234E of the Act for the period prior to 01.06.2015. The assessee has explained before the Ld. CIT(A) that it has received the intimation u/s 200A of the Act on 03.12.2015 only and there was technical default in giving E-mail of his tax consultant, therefore, it could not receive the intimation electronically. In the written submission, the assessee has submitted that identical issue of similar facts has been adjudicated by the ITAT, Mumbai in favour of the assessee on the issue of levying of impugned late fees for the period prior to 01.06.2015. In this regard, the assessee has relied on the decision of ITAT, Mumbai in the case of Ravi Kumar Valecha v. Assessing Officer TDS ward, Kalyan (ITA No. 4822/Mum/2016) dated 15.06.2018. We have perused the submission of the assessee and also gone through the decision of ITAT, Mumbai in the case of Popular Catering Services v. DCIT, CPC-TDS, Mumbai (ITA No. 674/M/2019 for

AY 2013-14) wherein the Bench after referring the decision of ITAT Mumbai in the case of Ravi Kumar Valecha (supra) decided the issue in favour of the assessee after distinguished the case of Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. UOI, [2017] 83 Taxmann.com 137 and the decision of Hon'ble Karnataka High Court in the case of Sri Fatheraj Singhv v. UoI (73 taxmann.com 252) (Karn) (HC).

Respectfully following the decision of the ITAT Mumbai as referred above, we consider that levying of late fees for the period prior to 01.06.2015 is not justified, therefore, the ground raised by the assessee is allowed.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 02/12/2021.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai;
Dated: 02/12/2021
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai