

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA Nos. 156 &amp; 157/Bang/2021</b>
<b>Assessment Years : 2013-14 &amp; 2014-15</b>

M/s. Theramyt Biologics Pvt. Ltd., [Now a defunct company], Rep. by Former Director, Smt. Kavitha Iyer Rodrigues, No. 201, Phase-2, Golden Park Apartments, Kodichikkanahalli, Bangalore – 560 076. PAN: AAECT4938R	<b>Vs.</b>	The Assistant Commissioner of Income Tax, Centralized Processing Cell-TDS, Ghaziabad – 201 010.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Pranav Krishna, Advocate
Revenue by	:	Smt. Priyadarshini Basaganni, JCIT (DR)

Date of Hearing	:	30-12-2021
Date of Pronouncement	:	21-02-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeals are filed by assessee against separate orders both dated 10.07.2019 passed by the Ld.CIT(A)-3, Bangalore for A.Ys. 2013-14 & 2014-15. The issues contested by assessee in both these appeals are common and are on identical

facts. For the sake of convenience, grounds raised by assessee for A.Y. 2013-14 are reproduced herein under.

*“1. The order of the learned Commissioner of Income tax [Appeals] passed under Section 250 of the Act in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*

*2. The appellant denies itself liable to charged to fees under Section 234E of the Act amounting to Rs. 11,800/- on the facts and circumstances of the case.*

*3. The learned Commissioner of Income tax [Appeals] erred in confirming the levy of fee u/s. 234E of the Act amounting to Rs. 11,800/- by the learned assessing officer on the facts and circumstances of the case.*

*4. The learned Commissioner of Income tax [Appeals] erred in dismissing the appeal as being non-maintainable and defective for the reason that order u/s .200A was not filed with Form 35 without affording an opportunity to the Appellant to rectify the said defect on the facts and circumstances of the case.*

*5. Without Prejudice, the learned Commissioner of Income tax [Appeals] failed to appreciate that Section 200A does not permit processing of TDS statement for default in payment of late fees except any arithmetical error or incorrect claim or default in payment of interest and TDS payable or refundable etc., and that the late fee for TDS quarterly statement cannot be recovered by way of processing u/s. 200A on the facts and circumstances of the case.*

*6. Without Prejudice, the learned Commissioner of Income tax [Appeals] failed to appreciate that Section 200A of the Act, amended by the Finance Act, 2015 w.e.f. 01/06/2015 providing for the mechanism to recover late fee u/s. 234E being prospective in nature and that the recovery of late fee u/s. 234E for the impugned assessment year is not applicable for the impugned assessment year on the facts and circumstances of the case.*

*7. Without Prejudice, the learned Commissioner of Income tax [Appeals] failed to appreciate that there was no enabling provision prior to 01/06/2015 to recover fee u/s. 234E and that the levy of 234E for the impugned year being prior to 01/06/2015 needs to be quashed on the facts and circumstances of the case.*

*8. The learned CIT [A] erred in not adjudicating the case of the Appellant on the merits of the matter on the facts and circumstances of the case.*

9. *Without Prejudice, the levy of fee under section 234E of the Act is bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernable and are wrong on the facts of the case.*

10. *For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”*

**2. Brief facts of the case are as under:**

We refer to the facts for A.Y. 2013-14. The Ld.CIT(A) has noted that assessee deducted TDS pertaining to A.Y. 2013-14 and filed Quarterly eTDS return in form 24Q for Qtr. Q4 through NSDL. The same was processed by the CPC, Ghaziabad. The Ld.CIT(A) notes that in form 35, the order dated was mentioned to be 16.01.2018 passed by the Ld.AO u/s. 200A of the Act, the date of service of the order was stated to be 28.03.2018 and the appeal was filed by assessee on 04.06.2018. The Ld.CIT(A) observed that there was a delay in filing the appeal and assessee had not filed any request for condonation of delay.

**3.** During the appellate proceedings, the Ld.CIT(A) called upon assessee vide order sheet entry 09.07.2019 to furnish explanation regarding discrepancy. In reply, assessee submitted that copy of the intimation u/s. 200A was not available and the demand was conveyed to it through letter dated 16.01.2018 sent by ITO, TDS. Assessee submitted that it was based on this letter that assessee filed appeal before the Ld.CIT(A). It was the submission of assessee that copy of order u/s. 200A was neither uploaded nor was provided during the first appellate proceedings.

**4.** The Ld.CIT(A) dismissed the appeal filed by assessee for both the years under consideration by holding that the said letter dated 16/01/2018 is not appealable u/s. 246A of the Act and

that the assessee had not filed any copy of the order u/s. 200A of the Act. The Ld.CIT(A) dismissed the appeal as not maintainable and defective.

Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us now.

**5.** It is the primary submission of Ld.AR that late filing fee of the TDS return cannot be levied before 01.06.2015 as has been observed by the *Hon'ble Karnataka High Court* in case of *Fatheraj Singhvi v. Union of India* reported in (2016) 73 taxmann.com 252. It is submitted that the amendment to section 200A(1) is procedural in nature and in view thereof, the Ld.AO while processing the TDS statements/returns in the present set of appeals for the period prior to 1-6-2015, was not empowered to charge fees under section 234E. Hence, the intimation issued by the Ld.AO under section 200A in the present appeals does not stand and test of law. Therefore he submitted that the issue raised by way of charging the fees under section 234E is not valid and the same is to be deleted.

The Ld.Sr.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

**6.** We note that for A.Y. under consideration, the Ld.AO sent demand notice on 16.01.2018 towards penalty u/s. 234E for a delay in filing eTDS return. It is the submission of the assessee that section 200A was amended by the Finance Bill, 2015 w.e.f. 01.06.2015 wherein a new clause (c) was inserted w.e.f. 01.06.2015. It is also submitted that prior to 01.06.2015, there

was no enabling provision in the Act for raising a demand in respect of levy of fee u/s. 234E and since the years under consideration are prior to 01.06.2015, no late fee can be levied u/s. 234E of the Act. This issue has been considered by *Hon'ble Karnataka High Court* in case of *Fatheraj Singhvi v. Union of India (supra)*. The *Hon'ble Court* held as under:

*"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section*

*200A(1) should be treated as retroactive in character and not prospective.*

*22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having Assessment Years: 2013-14 to 2015-16 retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."*

**6.1.** The *Hon'ble High Court of Karnataka* explained the position of charging of late filing fees under [section 234E](#) of the Act and the mechanism provided for computation of fees and failure for payment of fees under [section 200A](#) of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under [section 200A](#) of the Act for computation and intimation for payment of late filing fees under [section 234E](#) of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the *Hon'ble High Court*.

**6.2.** The *Hon'ble High Court* thus held that where the impugned notices given by Revenue [section 200A](#) of the Act were for the period prior to 01.06.2015, the same were illegal and invalid.

**7.** The Ld.CIT(A) is directed to provide the assessee with the order passed u/s. 200A of the Act. In view of the above observation by

the *Hon'ble High Court*, we are of the opinion that the Ld.CIT(A) erred in dismissing the appeal as not maintainable. This issue deserves to be remanded back to the Ld.CIT(A) to consider it on merits. Any delay in filing the appeal before Ld.CIT(A) is also condoned.

**Accordingly, the appeals filed by the assessee in both the years under consideration stands allowed for statistical purposes.**

**In the result, both the appeals filed by assessee stands allowed for statistical purposes.**

Order pronounced in the open court on 21<sup>st</sup> February, 2022.

Sd/-  
(B.R. BASKARAN)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 21<sup>st</sup> February, 2022.  
/MS /

**Copy to:**

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

By order

Assistant Registrar,  
ITAT, Bangalore