

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.245/Chny/2021
निर्धारण वर्ष /Assessment Year: 2013-14

M/s.Sree DRG Vinyls Industries,
16/2, Kamaraj Road, Cross Street,
Thennampalyam Extension,
Tirupur-641 604, Tamil Nadu.
[PAN: ABRFS 0294 G]

(अपीलार्थी/Appellant)

v. The Dy. Commissioner-
of Income Tax,
Central Processing Cell-TDS,
Ghaziabad.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S. Sridhar, Adv., Erode
प्रत्यर्थी की ओर से /Respondent by : Mr. AR.V.Sreenivasan,
Addl.CIT

सुनवाई की तारीख/Date of Hearing : 24.02.2022
घोषणा की तारीख /Date of Pronouncement : 24.02.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 31.03.2021 and pertains to assessment year 2013-14.

2. We find that appeal filed by assessee is barred by limitation for which necessary petition for condonation of delay of 33 days explaining the reasons for the delay has been filed. The learned counsel submitted that assessee could not file appeal within the time allowed under the Act, therefore delay may be condoned. Having heard both sides and considered the petition filed by the assessee for condonation of delay of 33 days, we

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are of the considered view that reasons given by assessee for not filing the appeal within the time allowed under the Act comes under reasonable cause as provided under the Act for condonation of delay of 33 days and hence, delay in filing of above appeal is condoned and appeal filed by the assessee is admitted for adjudication.

3. Brief facts of the case are that for the financial year 2012-13, the assessee has filed TDS Quarterly returns in Form 26Q-Q2 beyond due date specified under the Act. The Assessing Officer has assessed TDS quarterly returns filed by the assessee under section 200A and levied late filing fee under section 234E of the Income Tax Act, 1961 [“Act” in short] for the delay in filing the said statements for all the assessment year. The assessee has challenged the levy of late filing fee under section 234E of the Act before the learned CIT(A). After considering the submissions of the assessee, the Id. CIT(A) dismissed the appeal.

4. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The solitary issue that needs to be resolved in the given facts and circumstances of the case is whether the Assessing Officer can levy late fee prescribed under section 234E of the Act, when the quarterly return filed by the tax deductor for the period prior to 01.06.2015, when the law has been amended by Finance Act enabling the Assessing Officer to compute late fee while processing TDS returns under section 200A of the Act. The provisions of section 234E of the Act, has been inserted to the statute by Finance Act with effect from

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01.07.2012 and provides levy of late fee for belated filing of quarterly return filed by the tax deductor. The Assessing Officer started levying of late fee under section 234E of the Income Tax Act, 1961 while processing quarterly TDS return and started issuing intimation to the assesseees. The issue has been challenged before various Courts by the assesseees by Writ and challenged the validity of provision of section 234E of the Act. In some cases, some Courts have granted stay of operation of intimation issued by the Department under section 200A of the Act. Therefore, on the basis of judgement of the Hon'ble High Court, the assesseees have started challenging the intimation issued by the Assessing Officer before the Id. CIT(A). The Id. CIT(A) did not entertain the appeal filed by the assessee on both counts, including on limitation in filing the appeal as well as on merits of the issue and rejected the arguments taken by the assessee and confirmed late fee levied under section 234E of the Income Tax Act, as per mandate of the statute. In the meantime, the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) had considered the issue and after analyzing the provisions of section 234E of the Act and section 200A of the Act and held that in the absence of enabling provision in section 200A of the Act, the Assessing Officer cannot levy late fee under section 234E of the Act, while processing the quarterly TDS return filed for the period of the respective assessment years prior to 01.06.2015. A similar view has been expressed by the Hon'ble Kerala High Court in the case of Olari Little Flower Kuries (P.) Ltd.

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v. Union of India [2022] 134 taxmann.com 111 (Kerala) after considering the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) and held that the provisions of section 200A of the Act were mandated to enable computation of late fee payable under section 234E of the Act, at the time of processing of quarterly TDS return and the said amendment came into effect from 01.06.2015. Thus, the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated return for the period prior to 01.06.2015 is invalid. Subsequent to the decisions of the Hon'ble Karnataka High Court and the Hon'ble Kerala High Court, series of decisions have been rendered by various Benches of the Tribunal and held that late fee under section 234E of the Act, cannot be levied for the period prior to 01.06.2015, because, there was no enabling provision to levy such late fee.

5. In the present appeal, on perusal of the facts, we find that the assessment year involved is prior to 01.06.2015. Therefore, we are of the considered view that the late fee charged by the Assessing Officer under section 234E of the Act, while processing quarterly TDS return under section 200A of the Act, is without any authority and invalid. Hence, by respectfully following the decision of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka), we are of the considered view that the Assessing Officer cannot levy late fee while processing of TDS return under section 200A of the Act up to the financial year 2012-13. Since, late fee charged in the

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present case pertaining to the financial year 2012-13, we direct the Assessing Officer to delete the late fee charged under section 234E of the Act in the intimation issued under section 200A of the Act for the processing of quarterly TDS return filed by the assessee.

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

Order pronounced on the 24th day of February, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 24th February, 2022.

TLN, Sr.PS

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF