

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.Nos.3495 to 3504/Chny/2019

(निर्धारणवर्ष / Assessment Years: 2013-14 to 2015-16)

M/s. SSS Constructions 678, T.H.Road, New Washermanpet, Chennai-600 081.	vs	The Assistant Commissioner of Income Tax, CPC-TDS , Ghaziabad.
PAN: ABNFS 8664G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	None
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. G. Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	12.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	22.04.2022

आदेश / ORDER

PER BENCH:

This bunch of ten appeals filed by the assessee are directed against common order passed by the learned Commissioner of Income Tax (Appeals)-17, Chennai, dated 31.10.2019 and pertain to the assessment years 2013-14 to 2015-16.

2. The assessee has more or less raised common grounds of appeal for all assessment years, therefore, for the sake of brevity grounds of appeal filed in ITA No. 3495 /Chny/2019 for the assessment year 2013-14 are reproduced as under:-

“1. The Ld. CIT(A) rejected the appeal by refusing to condone the delay explained in condonation ion and did not decide on merits. This is unjustified and opposed to laws of natural justice.

2. In the absence of enabling provision relating to collection mechanism the action of CCIT(A)- TDS to recover the said fee by way of adjustment at the time of processing the TDS statement U/s 200A is bad in law. The Ld. CCIT demanding Interest U/s 220(2) and Late Fee U/s 234E is contrary to law.

3. The amendment by finance Act, 2015 made to Section 200A(c) cannot be treated as having retrospective effect, the Ld. assessing Officer has applied the provisions for FY 12-13, 13-14 and 14-15 which is erroneous and prejudice to the interest of the assessee. The provisions of section 200A is applicable from 01.06.2015 and it is not operative retrospectively. The Ld. CCIT has failed to appreciate this fact and has not followed the law.

4. The Ld. CCIT had levied the Interest and Late fee without giving an opportunity to the assessee to submit his defense and argue on non-chargeability of the said demand.

5. No adjustments in the amount refundable to or recoverable from the tax deductor were permissible in accordance with law as it existed at that point of time.

6. The Ld. CCIT ought to have examined the legality of adjustment under the intimation in the light of scope of section 200A.

7. The following case laws supports the grounds raised by the appellant as above:

i) Dollars & Pounds vs ACIT in ITA Nos.2015/Chny/2018 to ITA No. 2030/2018

ii) Sibia Healthcare Pvt. Ltd. Vs. DCIT, ITA No.90/Asr/2015 by ITAT Amritsar

8. For these and other reasons to be submitted during the hearing the Hon'ble Tribunal may quash the Interest U/s 220(2) and Late Fee U/s 234E levied by the Ld. CCIT."

3. Brief facts of the case are that the assessee has filed quarterly TDS return in Form 26Q for assessment years 2013-14 to 2015-16 beyond due date specified under the Act. The ACIT, CPC (TDS), Ghaziabad, passed order levying late fee u/s.234E of the Act, for belated filing of quarterly TDS returns. The assessee has challenged late fee levied by the ACIT, CPC Delhi before first appellate authority and such appeals have been filed beyond due date specified under the Act. The assessee has filed petition for condonation of delay and explained reasons for delay in filing appeals before the learned CIT(A). As per the assessee, it could notice demand raised by the Assessing Officer for belated filing of TDS returns only when demand has been appeared in online portal of the department. Since, the assessee firm has closed its business and there is no staff member to look after accounts of the firm, it could not notice order passed by the Assessing Officer u/s.200A, levying late filing fee u/s. 234E and interest u/s.220(2) of the Act. However, immediately after noticing

demand, the assessee took steps to file appeal before the learned CIT(A), which resulted in delay. The assessee further claimed that delay in filing of appeal before the first appellate authority is neither intentional nor to derive any undue benefit, but due to circumstances beyond control of the assessee. Therefore, requested to condone delay in filing of appeals in the interest of justice. The learned CIT(A), however, did not satisfy with explanation furnished by the assessee for delay in filing of appeals and according to learned CIT(A), reasons given by the assessee for abnormal delay in filing of these appeals does not come under reasonable cause as provided under the Act. Therefore, the learned CIT(A) rejected arguments of the assessee and dismissed appeals filed by the assessee without condoning delay. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

4. None appeared for the assessee. We have heard learned DR and perused orders of the authorities below. We find that the learned CIT(A) has disposed off appeals filed by the assessee on technical grounds without condoning delay in filing appeals, although, the assessee has filed petition for

condonation of delay. We find that the issue involved in the present appeals filed by the assessee is on levy of late fee u/s.234E of the Act, for belated filing of quarterly TDS returns beyond prescribed date and this issue is covered by various decisions of the Tribunal and High Courts, including decision of the co-ordinate Bench of ITAT., Chennai. The Tribunal in the case of M/s. M.F. Textiles Pvt.Ltd. Vs. ACIT in ITA Nos. 578 & 579/Chny/2021 dated 24.02.2022 had considered an identical issue in light of provisions of section 234E of the Act and also amendment to section 200A by Finance Act, 2015 w.e.f. 01.06.2015 and held that in absence of enabling provision u/s.200A of the Act, the Assessing Officer cannot levy late fee u/s.234E of the Act for belated filing of quarterly TDS return for period prior to 01.06.2015. The relevant findings of the Tribunal in ITA Nos.578 & 579/Chny/2021 dated 24.02.2022 are reproduced as under:-

“ 5. 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 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. 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.

6. *In the present appeals, on perusal of the facts, we find that the assessment years involved are 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 upto the financial year 2014-15. Since, late fee charged in the present case pertaining to the financial year 2013-14, 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.*

7. *In the result, both these appeals filed by the assessee are allowed."*

5. We further noted that since, the issue is already covered in favour of the assessee on the issue of levy of late fee u/s.234E of the Act, prior to 01.06.2015, in our considered view, the learned CIT(A) ought to have considered condonation of delay petition filed by the assessee, when the assessee had explained reasons for filing appeal beyond prescribed date under the Act. Hence, we direct the learned CIT(A) to take a lenient view on the issue of condonation of delay in filing of

appeal and decide the issue on merits, by considering reasons given by us in preceding paragraph.

6. In the result, appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 22nd April , 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 22nd April, 2022
DS

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.