

IN THE INCOME TAX APPELLATE TRIBUNAL

"H" BENCH, MUMBAI

BEFORE SHRIO.P. KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1902/Mum./2021
(Assessment Year : 2014-15)

ITA No.1903/Mum./2021
(Assessment Year : 2015-16)

ITA No.1904/Mum./2021
(Assessment Year : 2016-17)

Shri Sanjay Gopal Pandit
8/A, Amar Ashirwad CHS
Agashi Road, DMB Estate
Behind Woodland Cinema
Virar (West), Mumbai 401 303
PAN – PNEPO8160F

..... Appellant

v/s

National Faceless Appeal Centre, Delhi

..... Respondent

Assessee by : None

Revenue by : Shri Tejinder Pal Singh Anand

Date of Hearing – 12.04.2022

Date of Order – 26.04.2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the impugned orders, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, for the assessment years 2014-15, 2015-16 and 2016-17.

2. Since all the appeals pertained to the same assessee and issues involved are identical, therefore, these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order.

3. When the appeals were called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose of the appeals *ex-parte* qua the assessee after hearing the learner departmental representative and on the basis of material available on record.

4. In these appeals, assessee is aggrieved with (i) levy of fee under section 234E of the Act vide intimation issued under section 200A(1) of the Act for the period prior to 01.06.2015; and (ii) dismissal of its appeals by the learned CIT(A) on the ground of delay.

5. The assessee filed separate appeals before the learned CIT(A) for assessment years under consideration against the purported order/intimation dated 09.01.2020 under section 200A of the Act passed by the ITO, TDS Ward 2, Thane, levying fee under section 234E of the Act for late filing of TDS return for relevant financial years. As per the facts available on record, the said order dated 09.01.2020 was claimed to have been served on the assessee on 15.01.2020. However, in the appeals before the learned CIT(A), assessee did not file the copy of said purported

order/intimation under section 200A(1) levying fee under section 234E of the Act and instead filed copy of default summary of TDS statements along with Form No. 35. The learned CIT(A), vide separate impugned orders, noted that the default summary statements are issued by the TDS CPC along with the intimation/order under section 200A of the Act and copy of such orders under section 200A along with default summary are sent directly to the registered email id of the deductor and the details are also accessible on the departmental portal, which can also be accessed by the deductor. The learned CIT(A) further noted that the assessee has wrongly treated the default summary issued by the TDS CPC as an order under section 200A and has filed appeals enclosing same. Treating such appeals as defective, deficiency letters were issued to the assessee for rectification of such defects. However, as noted by the learned CIT(A), the assessee neither rectified the defects nor sought any further time for same. The learned CIT(A) further noted that the assessee has counted the number of days of delay from the date on which the default summary was downloaded by the assessee and not from the date of intimation/order under section 200A whereby the fee under section 234E of the Act was levied. The learned CIT(A) rejected the contention of the assessee that the assessee has not received any intimation of such outstanding dues and only upon initiation of recovery proceedings, assessee came to know about the outstanding demand. The learned CIT(A) vide separate impugned orders held that the assessee did not adduce any reasonable cause which prevented it from filing a valid appeal within the 30 days' time limit under

section 249(2) of the Act against the intimation issued under section 200A(1) of the Act. Accordingly, the learned CIT(A) dismissed the appeals, vide separate orders, treating the same to be not admissible in law and facts and to have been instituted belatedly on the basis of default summary without intimation under 200A of the Act.

6. During the course of hearing, learned departmental representative vehemently relied upon the impugned orders passed by the learned CIT(A) and submitted that the appeals were filed belatedly by the assessee.

7. We have considered the submissions and perused the material available on record. In the impugned orders, it is evident that the learned CIT(A) has not denied that fee under section 234E of the Act has been levied on the assessee for the financial years under consideration. The learned CIT(A) dismissed the appeals on the basis that same have been filed belatedly and no sufficient cause for condoning the delay has been put forth by the assessee. Further, the assessee has also not filed the copy of intimation/order issued under section 200A of the Act whereby the fee under section 234E of the Act was levied. Thus, only on the basis of above technicalities the learned CIT(A) dismissed the appeals filed by the assessee.

8. From the Form 35, forming part of the appeal set before us, it is evident that the assessee has raised following ground of appeal before the learned CIT(A):

"Income Tax Department (TRACES) erred in levy fees u/s 234E in its intimation (Default Summary) without verifying the fact that Power to levy fees u/s 234E in default summary statement u/s 200A was made applicable w.e.f. 01.06.2015 (Finance Act, 2015)."

However, the learned CIT(A) did not deal with merits of the case and proceeded to dismissed the appeals on the ground of delay and also defects in filing the appeals by the assessee. The learned CIT(A) also rejected the submission of the assessee seeking condonation of delay that the assessee has not received any intimation of such outstanding dues and only upon initiation of recovery proceedings, assessee came to know about the outstanding demand.

9. Further, on merits, we find that the issue whether clause (c) of section 200A(1), as substituted by Finance Act, 2015, w.e.f. 01.06.2015, whereby the A.O. was enabled to compute the fee under section 234E of the Act while processing of statement of tax deducted at source, is prospective in nature has come up for adjudication before the Hon'ble High Courts of various States. The first decision was rendered by the Hon'ble Karnataka High Court in Fatheraj Singhvi v/s Union of India, [2016] 73 taxmann.com 252 (Kar.), whereby the Hon'ble High Court held that such an amendment is prospective in nature and thus intimation issued under section 200A of the Act for computation and intimation of payment of fee under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 was not maintainable.

10. However, the Hon'ble Gujarat High Court in Rajesh Kourani v/s Union of India, [2017] 83 taxmann.com 137 (Guj.), did not concur with the views

expressed by the Hon'ble Karnataka High Court in Fatheraj Singhvi (supra), and held that the aforesaid amendment by Finance Act, 2015, w.e.f. 01.06.2015, is retrospective in nature.

11. Recently, the Hon'ble Kerala High Court had an occasion to deal with this issue in Olari Little Flower Kuries Pvt. Ltd. v/s Union of India, [2022] 134 taxmann.com 111 (Ker.), wherein the Hon'ble High Court had taken into consideration both the aforesaid decisions passed by the Hon'ble Karnataka High Court as well as Hon'ble Gujarat High Court. The Hon'ble Kerala High Court concurring with the decision passed by the Hon'ble Karnataka High Court in Fatheraj Sanghvi (supra) held that the provisions of section 200A of the Act as amended by Finance Act, 2015, enable computation of fee payable under section 234E of the Act at the time of processing of statement of TDS, is prospective in nature from 01.06.2015 and thus intimation issued under section 200A of the Act dealing with the fee under section 234E for belated filing of TDS return for the period prior to 01.06.2015, are invalid.

12. Further, we also find that the Co-ordinate Bench of the Tribunal in Permanent Magnets Ltd. v/s DCIT, ITA no.6436 to 6442/Mum./2018, order dated 07.08.2019, following the aforesaid decision of the Hon'ble Karnataka High Court in Fatheraj Sanghvi (supra) directed deletion of fee under section 234E of the Act levied vide intimation under section 200A of the Act for the period prior to 01.06.2015.

13. It is well established that rules of procedure are handmaid of justice. Further, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Thus, in view of the above, as the learned CIT(A) has dismissed the appeals filed by the assessee, on delay and on defects in filing the appeal, without dealing with merits of the case, we in the substantial interest of justice deem it appropriate to restore the appeals before the learned CIT(A) for adjudication on merits after condoning the delay in filing the appeals. The assessee is also directed to obtain the copy of intimation issued under section 200A(1) for financial years under consideration from the AO(TDS) and provide the same to the learned CIT(A) for adjudication of its appeals. Needless to mention that adequate opportunity of hearing shall be granted to the assessee before passing the order and the CIT(A) shall have the liberty to call for remand report, if any, from the concerned Assessing Officer while deciding this issue.

14. In the result, appeals by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 26.04.2022

Sd/-
O.P. KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 26.04.2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai