

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.788/M/2021
Assessment Year: 2014-15**

M/s. Lekhraj Corporation Pvt. Ltd., (Managing Partner – Shri Sanjeev Rajan Lekhraj), Galaf, Sidhwa House, Old BMP Bldg., N.A. Sawant Road, Colaba, Mumbai – 400 005 PAN: AACCL3194P	Vs.	ACIT 2(1)(2), Central Processing Cell- TDS, Aayakar Bhavan, Sector – 3, Vaishali, Ghaziabad, U.P. – 201010
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mukesh B. Advani, A.R.
Revenue by : Shri S.N. Kabra. Sr. A.R.

Date of Hearing : 08 . 04 . 2022

Date of Pronouncement : 29 . 04 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Lekhraj Corporation Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 15.03.2021 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] qua the assessment year 2014-15 on the grounds inter alia that :-

“The Learned Commissioner of Income Tax (Appeal National Faceless Appeal Centre has erred in confirming the Late Fees charged u/s 234-E of the Income Tax Act-1961 amounting to Rs.1,07,800/- (i.e. Rs.44,200/- in respect of 26Q and Rs.63,600/- in respect to 24Q) for late filing of TDS Quarterly Statements for 1st

Quarter pertaining to financial year ended 31st March 2014, wherein 26Q was filed on 21st February 2014 and 24Q was filed on 29th May 2014.

Since, the defaults has been committed by the Assessee prior to 1st June, 2015, hence the Assessing Officer is not Justified in levying the Late Fees U/s 234-E, while processing the statement of TDS u/s 200A of the Income Tax Act on the basis of amendment dated 1st June, 2015. And, it's now clearly settled that the amendment' brought to section the section 200A of the Act is prospective in nature and cannot be applied to previous TDS instances.

In light of the above said facts, the Late Fees of Rs. 1,07,800/charged by the Assessing officer & which is confirmed by the CIT(A) ought to be deleted.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : the assessee by filing present appeal challenged the impugned order confirming the charging of late filing fees levied by the Assessing Officer (AO) u/s 234E of the Income Tax Act 1961, (for short 'the Act'), by passing order u/s 200A of the Act. Impugned late fee has been charged by the A.O u/s 234E of the Act for first quarters pertaining to financial year ending 31st March 2014.
3. Assessee carried the matter before the Id. CIT(A) by way of filing appeal who has upheld levy of charging of late filing fees by the A.O u/s 234E of the Act by dismissing the appeals.
4. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.
5. Challenging the impugned order passed by CIT(A), the Id. A.R for the assessee contended that the late fee levied by A.O and confirmed by Id. CIT(A) is not leviable on the ground that the amendment inserted u/s 200A of the Ac is to be effective from 01.06.2015, which is not applicable to the facts and circumstances

of the case. To support his contentions ld. A.R for the assessee relied upon the order passed by coordinate benches of Tribunal in M/s Samikaran Learning Pvt. Ltd. Vs. DCIT, ITA No. 4050 to 4054/Del/2016, dated 09.11.2017, Smt. G. Indhirani Vs. DCIT, ITA Nos. 1019, 1020 7 1021/Mds/2015, dated 10.07.2015, Sibia Healthcare Pvt. Ltd. Vs. DCIT (TDS), ITA No. 90/Asr/2015, dated 09.06.2015, Dharam Deep Public School VS. DCIT, CPC-TDS, ITA No.3112 to 3116/ Del/2016, dated 05.01.2018, and Anand Hatcheries Pvt. Ltd. Vs. DCIT CPC-TDS, ITA Nos. 1337 to 1339/PN/2015, dated 23.09.2016. The Ld. A.R. for the assessee also submitted that identical issue has already been decided by the co-ordinate Bench of the Tribunal in assessee's own case in ITA Nos.789, 790, 791, 792, 793 & 794/MUM/2021 dated 31.12.2021.

6. However, on the other hand ld. D.R for the revenue contended that since Sec. 234B is charging provisions whereas u/s 200A is machinery provisions, the A.O was empowered to levy the late filing fees u/s 234E of the Act and drew our attention to the decision rendered by Hon'ble Bombay High Court in the case of Rashmikant Kundalia Vs. Union of India (W.P No. 771 of 2014) and decision rendered by Hon'ble Karnataka High Court in case of Adithya Bazor P. Solutions Vs. Union of India [W.P No. 6918 – 6938/2014 (T-IT)].

7. Before proceeding further, we would like to extract the provisions contained u/s 234E of the Act and provisions contained u/s 200A of the Act for ready perusal as under:-

“234E. Fee for defaults in furnishing statements

(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to

subsection (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012

200A: Processing of statements of tax deducted at source

(1) Where a statement of tax deduction at source, or a correction statement, has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

*(i) any arithmetical error in the statement; or
(ii) an incorrect claim, apparent from any information in the statement;*

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation: For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said subsection."

8. Section 200A was amended by way of Finance Act, 2015 as under:

"In section 200A of the Income-tax Act, in sub-section (1), for clauses (c) to (e), the following clauses shall be substituted with effect from the 1st day of June, 2015, namely:—

"(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

9. In the backdrop of the aforesaid facts and circumstances of the case and the provisions contained u/s 234 and 200A of the Act the sole question arises for determination in this case is:

"as to whether amended provisions contained u/s 200A by virtue of Finance Act, 2015, effective from 1st June, 2015 are applicable to the cases decided prior to 1st June, 2015 ?"

10. Identical issues has already been decided by the co-ordinate bench of the Tribunal in the cases relied upon by the ld. A.R for the assessee referred to in preceding para 5.

11. We have perused the order passed by the co-ordinate Bench of the Tribunal vide order dated (supra) which is on identical issue and in favour of the assessee. The operative part thereof is extracted for ready perusal.

“In the backdrop of the aforesaid facts and circumstances of the case and the provisions contained u/s 234 and 200A of the Act the sole question arises for determination in this case is:

“as to whether amended provisions contained u/s 200A by virtue of Finance Act, 2015, effective from 1st June, 2015 are applicable to the cases decided prior to 1st June, 2015 ?”

9. *Identical issues has already been decided by the coordinate bench of Tribunal in the cases relied upon by the ld. A.R for the assessee referred to in preceding para 5.*

10. *When undisputedly levy has been made by the A.O in all appeals under consideration prior to 1st June, 2015 by invoking the provisions contained u/s 234E the same is not sustainable in the eyes of law. No doubt Hon’ble High Court of Bombay in case of Rashmikant Kundalia (supra) the constitutional validity of Sec. 234E of the Act has been, upheld, the same is not applicable to the facts of the cases at hand by virtue of the amendment to Sec. 200A by way of Finance Act, 2015 effective from 1st June, 2015 because A.O had issued intimation u/s 200A of the Act prior to 01.06.2015.*

11. *No doubt, provisions contained u/s 234E were inserted by the Finance Act, 2012 imposing a liability upon deductor where TDS statement/returns were filed belatedly to pay fee as per the said section, but Assessing Officer is to collect said fee chargeable u/s 234E of the Act for which machinery provisions have been provided u/s 200A of the Act to be effective from 01.06.2015. When undisputedly A.O has not invoked the provisions contained u/s 234E prior to 1st June, 2015 as required u/s 200A the levy is not sustainable, the said amendment being prospective in nature and cannot be applied in processing of TDS return/statement prior to 01.06.2015. So, the contention raised by ld. D.R for the revenue by relying upon the decision rendered by Hon’ble High Court’s referred to in the preceding para is not sustainable.*

12. *Identical issue has also been decided in favour of the assessee by the coordinate bench of the Tribunal in case of Sibia Healthcare Pvt. Ltd. By returning following findings para 8-10 as under:*

8. In effect thus, post 1st June 2015, in the course of processing of a TDS statement and issuance of intimation under section 200A in respect thereof, an adjustment could also be made in respect of the “fee, if any, shall be computed in accordance with the provisions of section 234E”. There is no dispute that what is impugned in appeal before us is the intimation under section 200A of the Act, as stated in so many words in the impugned intimation itself, and, as the law stood, prior to 1st June 2015, there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E. While examining the correctness of the intimation under section 200A, we have to be guided by the limited mandate of Section 200A, which, at the relevant point of time, permitted computation of amount recoverable from, or payable to, the tax deductor after making the following adjustments:

(a). after making adjustment on account of “arithmetical errors” and “incorrect claims apparent from any information in the statement”

- Section 200A(1)(a)

(b). after making adjustment for ‘interest, if any, computed on the basis of sums deductible as computed in the statement’.

- Section 200A(1)(b)

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

10. In view of the above discussions, in our considered view, the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A. This intimation is an appealable order under section 246A(a), and, therefore, the CIT(A) ought to have examined legality of the adjustment made under this intimation in the light of the scope of the section 200A. Learned CIT(A) has not done so. He has justified the levy of fees on the basis of the provisions of Section 234E. That is not the issue here. The issue is whether such a levy could be effected in the course of intimation under section 200A. The answer is clearly in negative. No other provision enabling a demand in respect of this levy has been pointed out to us and it is thus an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected. As intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within

31st March 2015. That time has already elapsed and the defect is thus not curable even at this stage. In view of these discussions, as also I.T.A. No.90 /Asr/2015 Assessment year 2013-14 Page 7 of 7 bearing in mind entirety of the case, the impugned levy of fees under section 234 E is unsustainable in law. We, therefore, uphold the grievance of the assessee and delete the impugned levy of fee under section 234E of the Act. The assessee gets the relief accordingly.”

13. In view of what has been discussed above and following the order passed by coordinate bench of Tribunal we are of the considered view for A.O as well as ld. CIT(A) have erred in levying /confirming the late filing fee u/s 234E of the Act by passing the order u/s 200A of the Act. Consequently, penalty levied/confirmed is ordered to be deleted.”

12. Following the order passed by the co-ordinate Bench of the Tribunal in assessee's own case, which is on identical facts and issue before the Bench and as such squarely applicable, we are of the considered view that levying/confirming the late fee under section 234E of the Act is not sustainable in the eyes of law, hence ordered to be deleted.

13. Consequently, present appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.04.2022.

**Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.04.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.