

आयकरअपीलीयअधिकरण “ए” न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH,
PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER AND
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.157/PUN/2020 ; A.Y.2013-14 ; for 27EQ-Q2

ITA No.158/PUN/2020 ; A.Y.2013-14 ; for 27EQ-Q3

ITA No.159/PUN/2020 ; A.Y.2013-14 ; for 27EQ-Q4

ITA No.160/PUN/2020 ; A.Y.2014-15 ; for 27EQ-Q1

ITA No.161/PUN/2020 ; A.Y.2014-15 ; for 27EQ-Q2

ITA No.162/PUN/2020 ; A.Y.2014-15 ; for 27EQ-Q3

ITA No.163/PUN/2020 ; A.Y.2014-15 ; for 27EQ-Q4

ITA No.164/PUN/2020 ; A.Y.2015-16; for 27EQ-Q1

ITA No.165/PUN/2020 ; A.Y.2015-16 ; for 27EQ-Q2

ITA No.166/PUN/2020 ; A.Y.2015-16 ; for 27EQ-Q3

ITA No.167/PUN/2020 ; A.Y.2015-16; for 27EQ-Q4

Elkay Spirits Private Limited, Flat No.A-2, Liberty Society, North Main Road, Koregaon Park, Pune – 411001. PAN: AAACE 4599 D	Vs	The Assistant Commissioner of Income Tax, CPC-TDS, Ghaziabad.
Appellant/ Revenue		Respondent/ Assessee

Assessee by	Shri Pratik Sandbhor – AR
Revenue by	Shri Arivnd Desai - DR
Date of hearing	15/06/2022
Date of pronouncement	16/06/2022

आदेश/ ORDER

PER BENCH:

This bunch of Eleven(11) Appeals have been filed by the appellant assessee against the separate orders of the ld.Commissioner

of Income Tax(Appeals)-10, Pune all appeals dated 26.11.2019 for the Assessment Years 2013-14(03 appeals), 2014-15(04 appeals) and 2015-16(04 appeals) respectively, involving proceedings under section 154 r.w.s 200A of the Income Tax Act, 1961 in short “the Act”, all with reference to levy of late fee under section 234E of the Act.

1.1. In this group of Eleven(11) appeals, the assessee has raised certain common grounds of appeal, facts in all cases are almost similar, except variation of additions, therefore, all appeals were clubbed, heard and are decided by consolidated order. **For appreciation of facts, the facts in ITA No.157/PUN/2020 for A.Y.2013-14 (27EQ-Q2) is treated as lead case.** The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case the ld.CIT(A) has grossly erred in upholding the order passed u/s 154 r.w.s. 200A and thereby confirming the levy of late fee u/s 234E of Rs.85,120/- in intimation u/s 200A in respect of TDS statement for Quarter 2 of A. Y. 2013-14.

2. On the facts and in the circumstances of the case the ld. CIT(A) has grossly erred in sustaining the levy of late fee u/s 234E for period prior to 01/06/2015, in the light of the fact that the provision for charging such late fee came into effect only from 01/06/2015 and therefore no late fee could be levied for such prior period.

3. On the facts and in the circumstances of the case the ld.CIT(A) failed to appreciate that the levy of late fee u/s 234E for period prior to 01/06/2015 was contrary to law as laid down by the Hon’ble ITA T, Pune in the case of Gajanan Construction & others in 161 ITD 313, in as much as the decision of Hon'ble ITAT is binding on the lower authorities as held by the Jurisdictional Bombay High Court in the case of Bank of Baroda V.H C Shrivatsava in 256 ITR 385 and therefore such levy of late fee in contradiction to law laid down by Jurisdictional High Court is a mistake apparent from record.

4. *On the facts and in the circumstances of the case the CIT(A) has erred in dismissing the appeal on the ground that the issue of levy of late fee u/s 234E for period prior to 01/06/2015, is not covered within the ambit of rectification u/s 154.*

5. *On the facts and in the circumstances of the case the ld. CIT(A) has erred in denying the appeal on the ground that the appeal has been filed late whereas the appeal is filed in due time from the date of receiving the order u/s 154 r.w.s. 200A.*

The above grounds of appeal may kindly be allowed to be altered, modified, amended, deleted etc in the interest of natural justice.

2. This appeal in ITA No.157/PUN/2020 is against the order of Commissioner of Income Tax (Appeals)-10, Pune, dated 26.11.2019 for the A.Y.2013-14, Q2, Q3 and Q4.

3. Aggrieved by the order under section 154 r.w.s. 200A of the Act, the assessee filed an appeal before the ld.CIT(A). The ld.CIT(A) dismissed the appeal in view of the fact that appeals were out of time without any reasonable and sufficient cause. The ld.CIT(A) has held as under:

“I am of the view that the appeals filed by the appellant cannot be admitted for adjudication, being out of time without any reasonable & sufficient cause.”

Observing the above, the ld.CIT(A) dismissed the appeal of the assessee.

4. Aggrieved by the said order of the ld.CIT(A), the assessee filed appeal before this Tribunal.

5. The Id.DR for the Revenue relied on the orders of the Lower Authorities.

6. We have gone through the Form No.35 filed by the assessee for the A.Y.2013-14. The Form No.35 was filed on 19.12.2018. The order under section 154 of the Act r.w.s 200A was passed on 01.12.2018 by Id.ACIT, CPC-TDS. Thus, the appeal has been filed in time before the Id.CIT(A). However, the Id.CIT(A) failed to verify the facts and dismissed the appeal.

6.1. In this case, Ld.ACIT, CPC-TDS passed an order on 01.12.2018 levying late filing fee under section 234E of Rs.53,200/- for Quarter-2 of F.Y. 2012-13. The assessee has filed the copy of the said order. The Id.Counsel for the assessee submitted that levy of late fee under section 234E is bad in law and needs to be deleted. He relied on various case laws.

7. We have heard both the parties and perused the material available on record and have gone through the order of Lower Authorities. It is a fact that order under 154 r.w.s. 200A of the Act was passed on 01.12.2018 for Q2 of F.Y. 2012-13 levying late filing fee of Rs.53,200/- under section 234E of the Act. It is observed from the Form No.35 (under Rule 45) that the assessee had filed appeal on 19.12.2018. The assessee has enclosed copy of the order under section

154 r.w.s 200A of the Act, dated 01.12.2018. The assessee filed appeal against the said order passed under section 154 r.w.s 200A of the Act before the ld.CIT(A) on 19.12.2018. Thus, this appeal has been filed within one month of the said order passed under section 154 r.w.s 200A of the Act. Therefore, there was no delay in filing appeal by the assessee before the ld.CIT(A). Therefore, the ld.CIT(A) has given an incorrect finding of fact.

8. The issue involved in this case is whether late fee under section 234E can be levied for F.Y. 2012-13. This issue is covered in favour of the assessee. The ITAT Pune in the case of Medical Superintendent Rural Hospital, vs. DCIT, CPC(TDS) [2018] 100 taxmann.com 78 (Pune Tribunal) has observed as under:

“11. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in Maharashtra Cricket Association v. Dy. CIT [2016] 74taxmann.com 6 (Pune - Trib.) relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under:—

"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS

statements /returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."

12. *The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education & Research Foundation v. Dy. CIT [2017] 88 taxmann.com 894 (Pune - Trib.) and also in Swami Vivekanand Vidyalaya (supra) and Medical Superintendent Rural Hospital v. ACIT [IT Appeal Nos.2072 &2073 (PUN) of 2017, order dated 21-12-2017], which has been relied upon by the learned Authorized Representative for the assessee.*

13. *The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi (supra) had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read 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 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."

14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.

9. Respectfully following the above decision of ITAT Pune Bench, we hold that the levy of late fee under section 234E of the Act for Quarter-2 of F.Y. 2012-13 is bad in law. Therefore, the Assessing

Officer is directed to delete the said late fee. Accordingly, the appeal of the assessee is allowed.

10. As we have noted above that the assessee has raised identical ground of appeal and the facts of this appeal under consideration are almost identical to the facts for the A.Y. 2013-14. Thus, our decision in **ITA No.157/PUN/2020 for A.Y. 2013-14 (27EQ-Q2)** would apply *mutatis-mutandis* for these remaining Ten(10) Appeals from **ITA No.158/PUN/2020 to ITA No.167/PUN/2020** appeals as well. Accordingly, these above mentioned three appeals of assessee are allowed.

11. To sum up, all i.e. Eleven(11) appeals filed by the assessee are allowed.

Order pronounced in the open Court on 16th June, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), Pune concerned.
4. The Pr. CIT, Pune concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.