IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

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

आयकर अपील सं. / ITA Nos.65 to 67/PUN/2020
निर्धारण वर्ष / Assessment Years: 2013-14 to 2015-16

Shri Kailash Rameshwar Loya, 1, Ashirwad, Bhokardan Road, Sambhaji Nagar, Jalna- 431203. PAN : ABWPL1181C	Vs.	ACIT, CPC (TDS), Ghaziabad.
Appellant		Respondent

Assessee by : None
Revenue by : Shri S. P. Walimbe

Date of hearing : 13.06.2022
Date of pronouncement : 20.06.2022

आदेश / ORDER

PER S. S. GODARA, JM:

These assessee's instant three appeals for assessment years 2013-14, 2014-15 and 2015-16 arise against the CIT(A)- 1 Aurangabad's separate orders; all dated 02.12.2019 passed in case no.ABD/CIT(A)-1/9/2018-19, ABD/CIT(A)-1/10/2018-19 and ABD/CIT(A)-1/11/2018-19; respectively involving proceedings u/s 200A r.w.s. 234E of the Income Tax Act, 1961; in short "the Act".

Cases called twice. None appears at assessee's behest. He is accordingly proceeded *ex-parte*.

2. Coming to the assessee's identical sole substantive grievance that the learned lower authorities have erred in law and on facts in levying section 234E read with section 200A late filing fee regarding fourth and last quarters in these three assessment years amounting to Rs.30,000/-, Rs.43,200/- and Rs.23,000/-; respectively, Mr. Valimbe vehemently argued that the CIT(A) has rightly refused to condone the corresponding delay. He also quotes hon'ble Gujarat high court's decision in Rajesh Kaurani vs. Union of India 83 taxmann.com 137 (Guj.) in support of the impugned late filing fee levy as well.

3. We have given our thoughtful consideration to the foregoing rival stands and find no merit in Revenue's arguments. We make it clear first of all that the assessee had duly filed his affidavit of having not receipt the CPC's Intimation and therefore, the delay in issue was neither intentional nor deliberate. Hon'ble apex court's landmark decision in Collector Land Acquisition vs. Mst. Kattji (1987) 167 ITR 471 (SC) has settled the law long back that all technical aspects including delay must make way for the cause of substantial justice. We accordingly condone the assessee's delay in issue before the CIT(A) in very terms.

4. Next comes the assessee's grievance on merits regarding correctness of the impugned late filing fee. We note that this tribunal co-ordinate bench in Nisar Mehboob Alam Khan vide ITA No. 1201/PUN/2019 for A.Y. 2013-14 order dated 31.05.2022 decides the very identical issue in favour of the assessee as follows :-

> *"13. We heard the rival submissions and perused the material on record. The only issue in the present appeal relates to the levy of late fees u/s 234E of the Act. The CPC (TDS) had levied penalty u/s 234E of the Act for belated submission of tax deducted at source statement during the financial year 2012-13. It is only w.e.f. 01.06.2015 an amendment was made u/s 200A of the Act providing that fee u/s 234E could be computed at the time of processing of the return of income and intimation could be issued specifying the same payable by the dedutor as fee u/s 234E of the Act. The Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India, 73 taxmann.com 252 held that the provisions of section 234E of the Act are substantive in nature and the mechanism for computing the late fee was provided by the Parliament only w.e.f. 01.06.2015. Therefore, late fees u/s 234E of the Act can be levied only prospectively w.e.f. 01.06.2015. The relevant observation of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra) are extracted hereunder :-*
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> > *"19. Hence, it can be said that, the mechanism provided for enforceability of Section 200(3) or 206C (3) for filing of the statement by making it penal under Section 272A (2) (k) is done away in view of the insertion of Section 271H providing for penal provision for such failure to submit return. When the Parliament has simultaneously brought about Section 234E, Section 271H and the aforesaid proviso to Section 272A(2), it can be said that, the fee provided under Section 234E is contemplated to give a privilege to the defaulter to come out from the rigors of penalty provision under Section 271H (1) (a) if he pays the fee within one year and complies with the requirement of sub-section (3) of Section 271H.*
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> > *20. In view of the aforesaid observations and discussion, two aspects may transpire one, for Section 234E providing for fee and given privilege to the defaulter if he pays the fee and hence, when a privilege is given for a particular purpose which in the present case is to come out from rigors of penal provision of Section 271H(1)(a), it cannot be said that the provisions of fee*

since creates a counter benefit or reciprocal benefit in favour of the defaulter in the rigors of the penal provision, the provisions of Section 234E would meet with the test of quid pro quo.

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.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.

25. As such, as recorded earlier, it is on account of the intimation received under Section 200A for making computation and demand of fees under Section 234E, the same has necessitated the appellant to challenge the constitutional validity of Section 234E. When the intimation of the demand notices under Section 200A is held to be without authority of law so far as it relates to computation and demand of fee under Section 234E, we find that the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise because there would not be any cause on the part of the petitioners to continue to maintain the challenge to constitutional validity under Section 234E of the Act. At this stage, we may also record that the learned counsels appearing for the appellant had also declared that if the impugned notices under Section 200A are set aside, so far as it relates to computation and intimation for payment of fee under Section 234E, the appellant-petitioners would not press the challenge to the constitutional validity of Section 234E of the Act. But, they

submitted that the question of constitutional validity of Section 234E may be kept open to be considered by the Division Bench and the Judgment of the learned Single Judge may not conclude the constitutional validity of Section 234E of the Act.

26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge."

14. The ratio of the above decision was followed by the Co-ordinate Bench of Pune Tribunal in the case of (i) Gajanan Constructions vs. DCIT, 73 taxmann.com 380, (ii) Maharashtra Cricket Association, Pune vs. DCIT, 74 taxmann.com 6 and (iii) Webtrust Co. In (India) Pvt. Ltd. ACIT, CPC (TDS) in ITA Nos.1818 & 1819/PUN/2018 for Assessment Years 2013-14 & 2014-15, order dated 02.11.2021. The decision rendered by the Hon'ble Bombay High Court in the case of Rashmikant Kundalia and Others (supra) does not come to the rescue of the Revenue, inasmuch as, the Hon'ble High Court had only upheld the constitutional validity of the provisions of section 234E of the Act. The Hon'ble High Court had not gone into the issue of retrospective operation of provisions of section 234E of the Act. In the circumstances, we direct the ACIT, CPC-TDS, Ghaziabad to delete the late fee being levied u/s 234E of the Act."

5. We adopt the foregoing detailed reasoning *mutatis mutandis* to delete the impugned late filing fee(s) levy is all the three assessment years in very terms.

6. These assessee's three appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced on this 20th day of June, 2022.

Sd/-	**Sd/-**
(DR. DIPAK P. RIPOTE)	**(S. S. GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 20th June, 2022.
Sujeet (DOC)

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad.
4. The CIT-TDS, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**A**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.