

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri Laliet Kumar, Judicial Member**

ITA Nos.502 to 504/Hyd/2021	
Assessment Years: 2013-14,2014-15 & 2015-16	
Katepally Venkata Subramanyam 40-304-7, Bellary Road Bhagya Nagar Kurnool-518 004  PAN : AAEHK7177E  (Appellant)	V s. ITO(TDS), Ward-1 Aaykar bhavan, N.R.Pet Kurnool    (Respondent)
Assessee by:	Shri A.Harish, CA
Revenue by:	Shri K.P.R.R.Murthy, Sr.AR
Date of hearing:	18.07.2022
Date of pronouncement:	19.07.2022

**ORDER**

**Per Bench**

These three appeals are filed by the assessee, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre, Delhi, dated 05.10.2021 for the AYs 2013-14,2014-15 & 2015-16 respectively, on the following grounds

*Grounds of Appeal*

1. *The Order of the ld Assessing Officer is contrary to the law and the facts*

2. *The ld AO erred in law by levying late filing fee U/s. 234E Rs.46,569/- by order dt 12.03.2014, when there was no authority to levy late filing fee prior to 01.06.2015.*

3. *The ld CIT(A) ought to have noted that the appellant filed rectification petition for deletion of late filing fee levied U/s. 234E of the Act in the original intimation order passed prior to 01.06.2015, while there was no authority to levy such late fee.*

4. The appellant states the above contention is squarely covered by the decisions of the Tribunals and High Courts that levy of late filing fee U/s.234E prior to 01.06.2015 is bad in law.

5. The appellant having regard to his advanced age and ill health could not pursue in filing Petition for rectification earlier and also on bona fide belief that late filing fee u/s.234E cannot be levied based on the facts of the case.

6. The ld CIT(A) grossly erred in holding that there is a delay in filing the appeal, and held that the delay has to be considered from the date of original intimation order dated 23.01.2015 and not from the date of Rectification Order dt 02.11 .2020 therefore the impugned order is bad in law and requires to be vacated.

7. The ld CIT(A) therefore ought to have noted that there was no delay in filing of the appeal on 14.11.2020 against rectification orders dt. 02.11.2020.

8. In the above facts and circumstances the Appellant contends that levy of late filing fee U/s.234E of the Act in the intimation order prior to 01.06.2015 is required to be deleted.

9. The appellant further contents adverse findings and observations made by the ld.CIT(A) in the impugned orders since are contrary to the facts and law, are required to be ignored.

2. It is the contention of the assessee before us that the respondent has levied the late fee u/s. 234E for a period prior to 01.06.2015 and which is not maintainable and in view of the following decisions:

*a. Fatheraj Singhvi & Ors Vs. Union of India (2017) reported in 10 ITR-OL 509 (Karn)*

*Held that "there was no power under Sec.200A to levy any late fee U/s. 234E prior to amendment of law on 01.06.2015. Therefore, the demand of late fee would be automatically cancelled as the law prevailing at that time U/s. 200A did not allow such levy while processing the TDS Returns*

*b. Olari Little Flower Kuries Pvt Ltd Vs. Union of India & Ors (2022) reported in 440 ITR 26 (Ker)*

*Held, dismissing the appeal, that the intimations dealing with filing of belated statements prior to June 1.2015 were liable to be set aside. Section 234E of the Income-tax Act, 1961 is intra vires the Constitution of India.*

c. *Jiji Varghese Vs. ITO (IDS) & Others (2022) reported in 443 ITR 267 (Ker)*

*Held, allowing the petition, (i) that the jurisdiction to levy late fee under section 234E arose only from June 1, 2015 and not earlier. The Judgement in Sarala Memorial Hospital Vs. Union of India W.P. (C) No. 37775 of 2018 dated December 18, 2018 had become final and was binding upon the authorities.*

d. *State Bank of India Vs. ITO (ITAT Agra Bench) (2018) reported in 195 TTJ 6 (Agra)(UO)*

*Held Prior to 1<sup>st</sup> June, 2015. there was no enabling provision under s.200A for raising demand in respect of levy of Fee Under s. 234E and. therefore the late fee levied under s.234E for the delay in filing the TDS statements for the period prior to 1<sup>st</sup> June. 2015 is not sustainable.*

e. *Similar views have been given in UOI V. Integreatz ERP (I) (P) Ltd (2022) reported in 184 TR (A)191 (Karn-HC)*

f. *Rose Rock Real Estate India Pvt Ltd Vs. AC1T- TDS & Ors in ITA No. 4824, 4823/Mum/20 19 (ITAT - Mum) dated 02.09.2021*

*Held it is undisputed that period of TDS return is prior to the amendment. At that time there was no enabling provision for levying interest under section 234E.....Hence to conclude since it has been held by higher courts that prior to enabling provision to lev: interest under section 234E. the interest for earlier period return due cannot be upheld we set aside the order of learned CIT(A) and decide the issue in favour of Assessee.*

3. Per contra the ld. DR had drawn our attention to paragraph 4 of the ld.CIT(A) order which is to the following effect.

*“A. The correction statements have been filed for the quarters of F.Y. 2012-13 and 2013-14 under consideration in the year 2020. The correction statements have been finalized u/s. 154 r.w.s. 200A by CPC-TDS for both appeals under consideration on 23.10.2020 and 02.11.2020. In both cases, the orders u/s. 154 r.w.s. 200A were passed after 01.06.2015.*

4. On the basis of the above finding given by ld.CIT(A) , ld.DR had submitted decision relied upon by the assessee are

distinguishable, as rectification order u/s. 154 r.w.s. 200A was passed by the CPC, TDS on 05.10.2021 .

5. Per contra, the ld. AR had drawn our attention to paragraph 3 at Page 21 of the order passed by the Bangalore Tribunal, wherein the identical facts, the Tribunal has set aside the order passed by the Ld.CIT(A).

*“3. The Brief facts of the case are that the assessee is a proprietor, engaged in the business of Health and Fitness equipment sales and filed the Quarterly TDS Returns for the A.Y. 2014-15 relevant to F.Y. 2013-14 for Q1, Q2 & Q3. The returns were processed and the ACIT, CPC-TDS levied late filing fees under [Section 234E](#) of the Act for Q1 Rs.55,000/- Q2 Rs.36,500/- and Q3 Rs.18,100/- aggregating to Rs.1,09,600/-. The contentions of the assessee, that the levy of late fees under [Section 234E](#) of the Act is illegal and relied on the decision of Hon'ble Karnataka High Court in the case of Sri Fatehraj Singh & Others Vs. UOI 289 CTR 602 (Kar), where it was held that the provisions of [Section 200A\(1\)](#) Clauses(c), (d) and (f) of the Act are effective from 1.6.2015 and therefore the intimation under [Section 200A](#) of the Act in respect of prior period to 1.6.2015 is without any authority under law and is not sustainable. Whereas the intimation under [Section 200A](#) of the Act for the Asst. Year 2014-15 was passed on 9.4.2014 and the assessee has filed rectification petition for the Q1, Q2 & Q3 and the CPC-TDS has passed order under Section 154 of the Act dt.13.3.2019. Aggrieved by the order of rectification under [Section 154](#) of the Act, the assessee has filed an appeal before the CIT (Appeals). Whereas the CIT (Appeals) observed that the assessee has filed an appeal against the order under [Section 154](#) of the Act, challenging the levy of late fees under [Section 234E](#) of the Act which is not a mistake apparent from record, and also the decision of the Hon'ble Karnataka High Court in Sri Fatehraj Singh & Others Vs. UOI (supra) is applicable prospectively and dismissed the appeal of the assessee. Aggrieved by the order of CIT (Appeals), the assessee has filed an appeal with the Tribunal.”*

6. Similar issue to the fact, the other decision passed by the Tribunal in the said decision in paragraph 11 & 12. It was held as under:

“11. Upon careful consideration we find that higher court including that from Hon'ble Karnataka High Court have held that prior to amendment w.e.f. 1.6.2015 interest under [section 234E](#) could not be levied. It is undisputed that period of TDS return is prior to the amendment. At that time there was no enabling provision for levying interest under [section 234E](#). Several decisions from High Courts and ITAT were referred before learned CIT(A). Despite this the learned CIT(A)'s rules that there is no ambiguity in law and he upholds the order of interest levy. There is no jurisdictional High Court decision on this issue. No effort has been done by learned CIT(A) to distinguish the case law of Vegetables Products Ltd. (supra) from Hon'ble Supreme Court cited before him. The said case law provides that if two views are possible the view in favour of the assessee has to be adopted. Hence, if as per learned CIT(A) there are divergent views of Hon'ble High Courts, in absence of a Jurisdictional High Court decision, the learned CIT(A) should have followed the ratio from this Hon'ble Supreme Court decision and followed the high court decision in favour of the assessee. In our opinion learned CIT(A) has engaged in judicial indiscipline and his approach and order cannot be countenanced. Further we may refer to the penultimate para of learned CIT(A) order :-

*"The appellant's another plea that the rejection of order u/s 154 of the assessee by the AO is bad in law as law in this respect was very clear. However, it is clearly apparent that where on an issue the two High Courts are giving divergent opinions, the issue is definitely debatable and cannot be considered as an apparent mistake from the record. Thus, the rejection by the AO is as per law and hence this plea of deletion of demand u/s 234E by the AO cannot be entertained at the time of passing an order u/s 154. Hence, on this ground, the AO's order is upheld."*

12. Since learned CIT(A) himself says, that the issue is debatable then the same takes the adjustment out of the jurisdiction of CPC Bangalore. As debatable issues cannot be decided under computerised adjustment. Hence to conclude since it has been held by higher courts that prior to enabling provision to levy interest under [section 234E](#), the interest for earlier period return due cannot be upheld we set aside the order of learned CIT(A) and decide the issue in favour of assessee.”

7. Respectfully following the decision of the ITAT Mumbai Bench in the case of Rose rock Real Estate India Pvt.Ltd vs ITO in ITA No.4824 & 4823/M/2019 order dated 02.09.2021 and ITAT Bangalore Bench in case of Srinivasamurthy Kolhially Yalakaiah

vs ACIT in ITA No.1963 to 1965/Bang/2019 order dated 26.06.2020 , we hereby allow the appeals of the assessee.

In the result, these three appeals of the assessee are allowed.

Order pronounced in the Open Court on 19<sup>th</sup> July, 2022.

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 19<sup>th</sup> July, 2022.

**Thirumalesh/sps**

Copy to:

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2	ITO(TDS), Ward-1 Aaykar Bhavan, N.R.Pet Kurnool
3	CIT(A), Hyderabad
4	NFAC, Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*