

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 163 to 167/Asr/2021**  
Assessment Years: 2013-14 & 2014-15

BDS Technologies Shop No. 1-2, Ground Floor, Nehru Shopping Complex, Lawrence Road, Amritsar [PAN: AAMFB 0260H] <b>(Appellant)</b>	Vs.	Income Tax Officer (TDS), Amritsar  <b>(Respondent)</b>
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Appellant by : Sh. Vipul Arora, CA

Respondent by: Sh. S. M. Surendranath, Sr. DR

Date of Hearing: 07.07.2022

Date of Pronouncement: 11.08.2022

**ORDER**

**Per Dr. M. L. Meena, AM:**

In this bunch of appeals, the appellant assessee has challenged the sole issue of levy of fees u/s 234E pertaining to the period prior to 1<sup>st</sup> June, 2015. Since, the common issue of processing the statement of TDS u/s 200A of the Income Tax Act, 1961 for late filing of TDS statements, on identical facts is being involved in all the five appeals, hence, we decided to hear all these five appeals together and disposed of by this common order for the sake of brevity.

2. At the outset, the Id. counsel for the assessee has submitted that the assessee has filed its statement of TDS return u/s 200A in respect of assessment year 2013-14 for quarter 2, quarter 3, quarter 4; that Quarter 1 of assessment year 2014-15 on 04.10.2013; that quarter 1 in respect of assessment year 2014-15 on 04.10.2013 besides quarter 2 of the assessment year 2014-15 on 11.01.2014. These statements are processed on 16.10.2016 and 13.11.2016 by levy u/s 234E, on account of late filing of TDS statement u/s 200A of the Act.

3. The Id. counsel of the assessee argued that there is no provision of levying the fees u/s 234E prior to 1<sup>st</sup> June, 2015. The issue of levy of fee u/s 234E has been settled in view of the plethora of decisions. The Id. AR has contended that the order u/s 154 should be passed against the order of section 200A of the IT Act, 1961 where fee is levied u/s 234E, relying on the decision of ITAT Pune Bench which has dealt with the issue in the bunch of 105 similar appeals in ITA No. 560/PN/2016 and 561/PN/2016 & Ors. in the case of Maharashtra Cricket Association. The relevant para no. 4 of the order is reproduced as under:

*“4. The issue arising in all the appeals before us is against intimation issued under section **200A of the Act and / or order passed under section 154 of the Act** in charging fees payable under section 234E of the Act. The assessee has raised two facets of the issue; one against the order of CIT(A) in holding that such orders passed are not appealable and not maintainable under section 246A(1) of the Act. The second aspect of the issue raised in the set of appeals is charging of fees payable under section 234E of the Act prior to amendment to section 200A(l)(c) of the Act vide Finance Act, 2015 w.e.f. 01.06.2015, while processing the TDS returns. The assessee has also pointed that the Legislature had inserted clause (c) to section 200A(1) of the Act specifically w.e.f. 01.06.2015 and where there is nothing to suggest that the said amendment was clarificatory or retrospective in nature, hence in respect of TDS statements filed*

*for the period prior to 01.06.2015, late fees charged under section 234E of the Act could not be levied in the intimation issued under section 200A of the Act. " The above order was also followed by the Hon'ble Delhi ITAT in the case of Franchise India Brands Ltd.vs. CPC-TDS [2020] 122 taxmann.com 196 (Delhi - Trib.)*

*In the light of above submissions, your honours are requested to quash the orders of Worthy CIT (A) confirming levy of fees on the appellant for different quarters of AY 2013-14 and AY 2014-15."*

He further submitted that the order of the Pune Bench has been followed by ITAT Delhi Benches in the case of Franchise India Brands Ltd. v. CPC-TDS (2020) 122 taxman.com 196 (Delhi, Trib.). Accordingly, he has requested to quash the order of the worthy CIT(A) confirming the levy of fee of the appellant for different quarters of the assessment years 2013-14 and 2014-15.

4. Per contra, the Id. DR stand by the order of the CIT(A).

5. We have heard the rival submission and perused the material available on record. While examining the correctness of the intimation u/s 200A, we are guided by the limited amendment of section 200A, at the relevant point of time to promote computation of amount recoverable from or payable, the tax deductors after making adjustments in respect of arithmetical errors and interest respectively 200A(1) and 1B(B) to section 200 A of the Act. No other adjustment in the amount refundable to, or recoverable from, the tax deductors, were permissible within the law as it existed at that point of time.

6. In the above view, the Id. CIT(A) ought to have considered the coordinate bench decision in the case of Sibia Healthcare Pvt. Ltd. (supra)

and granted relief to the assessee. The CIT(A) instead of following Gujarat High Courts in the case of Rajesh Kourni v. UOI 83 Taxman.com 137 ought to have followed the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. UOI (289 CTR 602). When two different views are held by the Hon'ble High Courts, one which is in favour of the assessee is required to be followed in view of the principle laid down by the Hon'ble Apex Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192 (SC). We hold that the adjustments in respect of levy of fees u/s 234E indeed during the scope of permissible adjustments contemplated u/s 200A in respect of the period of quarters of the assessment year involved in the present appeals, as the related TDS statement was filed on 04.10.2013 and 11.01.2014, such a levy of fee could only have been made at best then the 31<sup>st</sup> March, 2015 respectively. Similar view is taken by a coordinate Bench Amritsar in the case of Sibia healthcare Pvt. Ltd. v. DCIT (TDS) in ITA No. 90/Asr/2015 in respect of assessment year 2013-14.

7. We, therefore, accept the grievance of the assessee as genuine and delete the impugned levy of fee u/s 234E of the Act in all the five appeals. Thus, the assessee gets relief accordingly.

8. In the result, the appeals of the assesseees are allowed.

*Order pronounced in the open court on 11.08.2022.*

**Sd/-**  
**(Anikesh Banerjee)**  
**Judicial Member**

**Sd/-**  
**(Dr. M. L. Meena)**  
**Accountant Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T.

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By Order