

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA Nos.	निर्धारण वर्ष / A.Y.	अपीलार्थी / Appellant	प्रत्यर्थी / Respondent
272/Hyd/2022	2013-14 (TDS 24Q-Q2)	Viskaan Pharma Private Limited, Hyderabad [PAN: AAACV8232G]	Income Tax Officer (TDS), Ward-2(3), Hyderabad
273/Hyd/2022	2013-14 (TDS 24Q-Q3)		
274/Hyd/2022	2013-14 (TDS 24Q-Q4)		
275/Hyd/2022	2014-15 (TDS 24Q-Q2)		
276/Hyd/2022	2014-15 (TDS 24Q-Q3)		
277/Hyd/2022	2013-14 (TDS 26Q-Q3)		
278/Hyd/2022	2014-15 (TDS 26Q-Q3)		
288/Hyd/2022	2013-14 (TDS 26Q-Q2)		
289/Hyd/2022	2013-14 (TDS 26Q-Q4)		
290/Hyd/2022	2013-14 (TDS 26Q-Q4)		
291/Hyd/2022	2014-15 (TDS 26Q-Q2)		
292/Hyd/2022	2014-15 (TDS 26Q-Q3)		
293/Hyd/2022	2014-15 (TDS 26Q-Q2)		

निर्धारिती द्वारा/Assessee by: Shri D. Venugopal, AR  
राजस्व द्वारा/Revenue by: Shri K.P.R.R. Murthy, DR

सुनवाई की तारीख/Date of hearing: 06/09/2022  
घोषणा की तारीख/Pronouncement on: 08/09/2022

**आदेश / ORDER**

**PER BENCH:**

Aggrieved by the orders passed by the learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi (“Ld. CIT(A)”), in the case of M/s. Viskaan Pharma Pvt. Ltd., (“the assessee”) for the assessment years 2013-14 & 2014-15, the assessee preferred these appeals. Inasmuch as the facts and the grounds of appeal are identical in all these appeals, we deem it proper to dispose-of these appeals by this common order.

2. At the outset, it is noticed that the ITA Nos. 272 to 278/Hyd/2022 are filed with a delay of seven days and that the Ld. CIT(A) disposed of three appeals, namely, for the fourth quarter of assessment year 2013-14, second and third quarters of assessment year 2014-15 in duplicate, namely, the appeal filed in physical form as well as once submitted on-line. Insofar as the appeals filed with delay are concerned, reason attributed for the delay in filing of these appeals is that at relevant point of time, the Chartered Accountant was not well due to viral fever, cold, cough and body ache and was advised bed rest by the doctors and was not attending the office, which prevented the assessee from contacting the Chartered Accountant earlier than 08/07/2022 when he resumed the office work. The appeals were got prepared on 08/07/2022 and 09/07/2022 and the

same are being filed before the ITAT on 11/07/2022 as 09/07/2022 and 10/07/2022 are closed holidays for the Tribunal on account of Saturday and Sunday respectively.

3. Though the learned DR does not concede these facts, the fact remains that the pandemic has not receded yet completely, and further that the assessee does not stand to gain by filing the appeals with any delay. It is the cardinal principle of law that when technicalities are pitted against the delivery of substantial justice, the former must give way to the later and a case cannot be thrown out without consideration on merits, unless any rights are crystallised to the other party. Having regard to the facts and circumstances in their totality, we are of the considered opinion that no prejudice would be caused to the case of Revenue by condoning the delay in these matters, and the highest that would happen is that a cause could be decided on merits. With this view of the matter, we condone the delay and proceed to dispose of the appeals on merits.

4. Grievance of the assessee in all these appeals is that the fee under section 234E of the Income tax Act, 1961 ("the Act") for furnishing the statement under section 200 Clause-3 of the Act with delay, was levied for the periods prior to 1<sup>st</sup> June 2015 through an intimation under section 200A of the Act, even though section 200A of the Act was amended with effect from 1<sup>st</sup> June 2015 containing a reference to section 234E of the Act.

5. When the assessee preferred appeals, Ld. CIT(A) followed the decision of the Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. Union of India (2017) 83 taxmann.com 137 (Gujarat) and held that section 234E of the Act is the charging section whereas section 200A of the Act is a machinery provision, and charging section cannot be subservient to the machinery provision. However, in the case of Fatheraj Singhvi Vs. Union of India [2016] 73 taxmann.com 252 (Karnataka), the Hon'ble Karnataka High Court considered the question whether amendment made under section 200A of the Act providing that fee under section 234E of the

Act could be computed at the time of processing of return and intimation could be issued specifying same payable by the deductor as fee under section 234E of the Act has come into force with effect from 01/06/2015, and held that Section 200A of the Act enabling Assessing Officer to determine fee under section 234E of the Act brought about with effect from 01/06/2015 is prospective and, therefore, no computation of fee for demand or intimation for fee under section 234E of the Act could be made for TDS deducted for respective assessment year prior to 01/06/2015.

6. Learned AR submitted that in a catena of cases, various Co-ordinate Benches of the Tribunal noticed the decisions of the Hon'ble Gujarat High Court as well as Hon'ble Karnataka High Court, and while following the ratio laid down in the case of CIT Vs. Vegetable Products Ltd., (1973) 88 ITR 192 (SC) a consistent view was taken in favour of the assessee. He filed the copies of the orders in Ram Niwas Agarwal Vs. ITO, TDS in ITA Nos. 1911 to 1921/Bang/2019, dated 11/03/2021, Shri Raj Veer Singh Vs. ACIT in ITA No. 3681/Del/2017, dated 09/07/2021, M/s. Terra Infra Development Limited Vs. ITO(TDS), in ITA Nos. 1876 & 1875/Hyd/2017, dated 03/10/2018, M/s. S.P.R. Constructions Vs. ITO, in ITA Nos. 1783 to 1785/Hyd/2018, dated 17/03/2021, M/s. Swarup Hospitals Private Limited Vs. Addl.CIT(TDS), in ITA Nos. 1398, 1400, 1497 and 1401 to 1403/Hyd/2018, dated 15/02/2019 and Elite Engineering and Construction (Hyd) Pvt. Ltd., Vs. ITO, in ITA Nos. 2155 to 2167/Hyd/2017, dated 29/11/2018.

7. Though the learned DR placed heavy reliance on the orders of the authorities below, he does not dispute the fact of various Benches of the Tribunal other than the Tribunal located in Gujarat, have taken a consistent view that inasmuch as there was no machinery provision under section 200A of the Act till 01/05/2015 which was inserted by way of Finance Act, 2015 with effect from 01/06/2015, the learned Assessing

Officer has no power to make adjustment on account of levy of late fee under section 234E of the Act.

8. We have gone through the record in the light of the submissions made on either side. There is no dispute that the period covered under all these appeals is prior to 01/06/2015. It is also not in dispute that after noticing the decisions of the Hon'ble Gujarat High Court, Hon'ble Karnataka High Court (supra), and many other decisions of the Co-ordinate Benches of the Tribunal, the Delhi Bench of the Tribunal in the case of Supreme Brahmaputra (JV) Vs. TDS CPC in ITA No. 6706 to 6708/Del/2019, by order dated 31/08/2020 held that when there are conflicting decisions of various Hon'ble High Courts, in the absence of any view taken by the jurisdictional High Court, while following the decision of the Hon'ble Apex Court in the case of Vegetable Products Ltd., (supra), the view in consonance with the plea of the accused has to be taken. Similar is the view taken consistently by Co-ordinate Bench of this Tribunal in the cases of M/s. Terra Infra Development Limited Vs. ITO(TDS) (supra), M/s. S.P.R. Constructions Vs. ITO (supra), M/s. Swarup Hospitals Private Limited Vs. Addl.CIT(TDS) (supra) and Elite Engineering and Construction (Hyd) Pvt. Ltd., Vs. ITO (supra).

9. It is not the plea of the Revenue that there is any decision of the Hon'ble jurisdictional High Court contrary to the plea advanced before us by the assessee. In this set of facts and circumstances, while respectfully following the view taken by the Hon'ble Karnataka High Court followed by the Tribunal in the case of Ramniwas Agarwal (supra), Supreme Brahmaputra (JV) (supra) and Raj Veer Singh (supra), M/s. Terra Infra Development Limited Vs. ITO(TDS) (supra), M/s. S.P.R. Constructions Vs. ITO (supra), M/s. Swarup Hospitals Private Limited Vs. Addl.CIT(TDS) (supra) and Elite Engineering and Construction (Hyd) Pvt. Ltd., Vs. ITO (supra), we hold the issue in favour of the assessee and direct the learned

Assessing Officer to delete the addition made under section 234E of the Act.

10. In the result, all these appeals are allowed.

Order pronounced in the open court on this the 8<sup>th</sup> day of September, 2022

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 08/09/2022

TNMM

Copy forwarded to:

1. Viskaan Pharma Private Limited, 2-3-70/34, Poornodaya Colony,  
Amberpet, Hyderabad.
2. Income Tax Officer, TDS Ward-2(3), Hyderabad.
3. CIT(A)-NFAC, Delhi.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD