

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

**Before Smt. Beena Pillai, Judicial Member
and
Shri Laxmi Prasad Sahu, Accountant Member**

ITA No. 536/Bang/2022 (Assessment Year: 2014-15)		
Red Rooster Performance (International) Pvt. Ltd. B-10, NGEF Industrial Estate Whitefield Road Mahadevapura Post Bangalore 560048 PAN - AAECR1751N	vs	The Income Tax Officer Ward 3(1), TDS HMT Building, Bellary Road Bangalore 560032
(Appellant)		(Respondent)

Appellant by:	Mrs. Sunaina, CA
Respondent by:	Shri K.R. Narayana, Addl. CIT
Date of hearing:	02/08/2022
Date of pronouncement:	05/08/2022

ORDER

Per: L.P. Sahu, A.M.

This is an appeal filed by the assessee against the DIN & order No. ITBA/NFAC/S/250/2022-23/1042909630(1) of the learned CIT(A), NFAC, Delhi in appeal dated 29.04.2022 for AY 2014-15.

2. The solitary substantial issue raised by the assessee challenges levying of late fee under Section 234E of the Income Tax Act (the Act) for the delay in remittance of TDS.

3. The brief facts of the case are that the assessee is engaged in the business of designing, modification, manufacture, trading of prototype

and to deal in all kinds of vehicles and vehicle spare parts to prepare vehicles for rallies and races and modification of all types of vehicles to the satisfaction of customers. The assessee had deducted TDS out of the payments made to parties and remitted the TDS to the government account and there was delay in filing e-TDS returns. The AO issued notice to the assessee and sought to recover the fees under Section 234E r.w.s. 200A of the Act amounting to Rs.22,400/- and interest under Section 220(2) of the Act. The assessee filed rectification application under Section 154 of the Act seeking nullification under Section 154(1)(c) of the Act stating that the demand under Section 234E of the Act is a mistake apparent from the records where the constitution has not given right to collect fee under Section 234E of the Act before 01.06.2015. However, the AO rejected the application of the assessee and directed the assessee to appeal before the CIT(A) for deletion/adjudication of the demand. Aggrieved, assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee by stating as under: -

"In view of the above, it is clear interpretation that the amount specified in the notice of demand issued u/s. 156 of the Act, shall be paid within the limitation period specified u/s. 220(1) of the Act. If the assessee failed to pay the same within the time frame, then the assessee is liable for simple interest. In this case, in the point No. 9 of the intimation order passed u/s. 154 r.w.s. 200A, it is clearly mentioned that 'This intimation may be treated as notice of demand under Section 156 of the Income Tax Act, 1961'. Therefore, it is clear that levying of interest upon the appellant is not erroneous in law as that demand notice has been properly issued to the appellant. Hence, the appeal of the assessee on this ground is dismissed."

4. The learned A.R. reiterated the submissions made before the lower authorities. He further submitted that the Parliament enacted amendment to Section 200A of the Act w.e.f. 01.06.2015 and had prospective effect. Hence no demand under Section 234E of the Act can be made for TDS

deducted prior to 01.06.2015. Therefore the demand made under Section 200A r.w.s. 243E of the Act is incorrect and without authority of law.

5. On the other hand, the learned D.R. vehemently supported the orders of the lower authorities.

6. We have heard rival submissions and perused the material on record. The issue on merits, namely, the levy of late fee u/s 234E of the Act through an intimation u/s 200A of the Act for the period prior to 01.06.2015 has been decided in favour of the assessee by the judgment of the Hon'ble Karnataka High Court in the case of Sri Fatheraj Singhvi v. Union of India & Ors. reported in 289 CTR 602 (Kar.). The relevant portion of the judgment reads as follows:-

"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.

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 271 H(3) that too by expressly putting 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, the contention of the respondent-revenue that insertion of clauses (c) to (f) under section 200A(1) should be treated as retroactive in character and not prospective is unacceptable.

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, it is found that substitution made by clauses (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.”

7. The Assessing Officer cannot make any adjustment other than one prescribed in section 200A of the Act. Prior to 01.06.2015, there was no enabling provision in section 200A of the Act for making adjustment in respect of delay in filing of statement by the assessee with regard to tax deducted at source by levying fees under Section 234E of the Act. The Hon'ble jurisdictional High Court in the case of Sri Fateharaj Singhvi v. Union of India & Ors. (supra) has held that adjustment cannot be made by the A.O. for the respective

assessment year prior to 01.06.2015. The assessee's case is for AY 2014-15 which is prior to 01.06.2015. Accordingly the assessee is out of purview of levy of fees under Section 234E of the Act. Going by the dictum laid down by the Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)* we allow the appeal of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 5th August, 2022.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bengaluru, Dated: 5th August, 2022

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
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By Order

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Assistant Registrar
ITAT, Bengaluru

n.p.