

आयकर अपीलिय अधिकरण, "गुवाहाटी" न्यायपीठ गुवाहाटी
IN THE INCOME TAX APPELLATE TRIBUNAL
"GUWAHATI" BENCH, GUWAHATI

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 172/GTY/2020
Assessment Year: 2014-15

&

I.T.A. No. 173/GTY/2020
Assessment Year: 2014-15 (F.Y. 2013-14; Q-1-26Q)

Assistant Garrison Engineer Independent Agartala Controller of Defence ACC Lichubagan Agartala - 799010 [TAN: SHLA02734 E]	Vs	DCIT, CPC - TDS, Ghaziabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 174/GTY/2020
Assessment Year: 2015-16 (F.Y. 2014-15; Q-4-24Q)

Assistant Garrison Engineer Independent Agartala Controller of Defence ACC Lichubagan Agartala - 799010 [TAN: SHLA02734 E]	Vs	DCIT, CPC - TDS, Ghaziabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

I.T.A. No. 177/GTY/2020
Assessment Year: 2014-15 (F.Y. 2013-14; Q-2-26Q)

Assistant Garrison Engineer Independent Agartala Controller of Defence ACC Lichubagan Agartala - 799010 [TAN: SHLA02734 E]	Vs	DCIT, CPC - TDS, Ghaziabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Sanjay Modi, FCA
Revenue by :	Smt. I Gyaneshori Devi, JCIT

सुनवाई की तारीख/Date of Hearing : 09/11/2022
घोषणा की तारीख /Date of Pronouncement: 16/11/2022

आदेश/ORDER

Per Sanjay Garg, Judicial Member :

These are the appeals filed by the assessee against the order of CIT(A)-Shillong, even dt. 17/09/2020 passed in I.T.A. Nos. 172, 173, 174 & 177 for Assessment Years 2014-15, 2014-15 (F.Y. 2013-14; Q-1-26Q), 2015-16 (F.Y. 2014-15; Q-4-24Q) & 2014-15 (F.Y. 2013-14; Q-2-26Q), respectively.

2. The common grievance of the assessee in all these appeals is that, the ld. CIT(A) has erred in dismissing the assessee's appeal in respect of levy of late fee u/s 234E of the Act for period/quarters prior to 01/06/2015

3. Brief facts of the case are that in all the above appeals under consideration, admittedly there was a delay in filing of TDS statement and during the processing of TDS return, the AO(TDS) raised demand by way of intimations issued u/s.200A of the Act for levy of fees u/s.234E for ITA Nos. 172, 173, 174 & 177 delayed filing of TDS statement for Quarter 1 in the Assessment Year 2014-15, for Quarter 2 in Assessment Year 2014-15, for Quarter 4 in Assessment Year 2014-15 and for Quarter 4 in Assessment Year 2015-16, respectively and passed orders.

4. Aggrieved by the order of AO, the assessee filed appeals before the CIT(A). The CIT(A) after considering the grounds of appeal of the assessee, has dismissed the appeals.

5. Now, the assessee is in further appeals before the Tribunal.

6. The ld. A/R of the assessee has submitted that, for the period/quarters prior to 01/06/2015, the Assessing Officer while issuing intimation u/s 200A of the Act did not have the authority under law to make any order u/s 234E of the Act. That the amendment made to Section 200A of the Act, *w.e.f.* 01/06/2015

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authorising Assessing Officer to levy fees u/s 234E of the Act, is prospective in nature and thus, not applicable for the period prior to 01/06/2015. The Ld A/R in this respect has filed an order of this Bench of the Tribunal in the case of *TB and ID Hospital vs. ITO-TDS(1), Bhubaneswar* in ITA Nos. 323 to 332/CTK/2018, order dt. 27/08/2018 and further submitted that this issue is covered in favour of the assessee in respect of levy of late fee u/s.234E of the Act, which fact has not been controverted by the ld. D/R.

7. We have heard rival submissions and perused the material on record. We find that on similar issue the Co-ordinate Bench of the Tribunal has decided the levy of late fee u/s.234E of the Act in *TB and ID Hospital vs. ITO-TDS(1), Bhubaneswar (supra)*, at para 7 onwards, observing as under:-

"7. We find that the Tribunal in the case of *Glee Pharma Pvt. Ltd., ITA Nos.161 to 163/CTK/2016, order dated 28.08.2017, has held as under :-*

"5. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. We find that on similar issue, this Bench of the Tribunal has deleted the levy of fee u/s.234 E of the Act in the above stated case, observing as under:

"We have heard both parties and perused the records. We find that the only issue permeating from all the 5 appeals is regarding imposition of levy of fee for late filing TDS return u/s 234E of the Act, while processing the statements furnished by the assessee u/s 200A of the Act. At the outset itself, it was pointed out by the Ld. Counsel for the assessee that this issue is no longer *res integra* since the Hon'ble Karnataka High Court in *Fatehraj Singhvi v. Union of India* (289 CTR 0602) has held that w.e.f. 01.06.2015, the Parliament by way of an amendment to [Section 200A](#) of the Act, has empowered the AO to levy fee u/s 234E of the Act while processing u/s 200A of the Act. Therefore, prior to that date i.e.01.06 .2015, the AO had no authority to levy fee u/s 234E of the Act. Therefore, according to the contention of the Ld. Counsel for the assessee, that the AO erred in levying the fee u/s 234E of the Act which been wrongly confirmed by the Ld. CIT(A) and, therefore, the impugned orders of the Ld. CIT(A) need to be deleted.

6. On the other hand, the Ld. CIT(DR) contended that the Punjab and Haryana High Court in [Dr. Amrit Lai Mangal vs. Union of India](#) 62 taxmann.com 310 (Punjab & Haryana) has taken a view which is in favour of the Revenue. On a query from the bench as to whether the jurisdictional High Court i.e. Hon'ble Orissa High Court has passed any orders in respect to the LIS before us. The Ld. DR fairly conceded that there is no order of the Hon'ble Orissa High Court on the issue in hand before us. It is well settled that when there is no order of the Jurisdictional High Court on the issue before us, the Tribunal will follow the order

of the High Court which is in favour of the assessee ([CIT vs. Vegetable Products Ltd.](#), 88 ITR 192 (SC)). In such a scenario, we are inclined to follow the order of the Karnataka High Court which has been brought to our knowledge by the Ld. Counsel for the assessee.

7. The facts in *Fatehraj Singh vs. Union of India* (supra), which was decided by the Hon'ble Karnataka High Court was that for financial year 2012-13 and 2013-14, TDS was deducted by the respective assesseees and deposited in the Government account. However, as per the Department, there was delay in filing the return/statement with the details of the persons from whom the TDS was deducted including the details and the persons concerned and the transactions etc. The Department issued intimation u/s [200A of the Act](#), calling upon the respective assesseees to pay late filing fee u/s [234E](#) of the Act in purported exercise of the power u/s [200A of the Act](#). The assessee challenged the levy of the fee and also the vires of the statute ([Section 234E](#)). The Hon'ble High Court did not make any finding in respect of the vires of the statute and the said issue was left open. However, the Hon'ble High Court held that prior to 01.06.2015, the AO while issuing intimation u/s [200A](#) does not have the authority under law, to make any order u/s [243E](#) of the Act and was pleased to delete the order of levy of late fee u/s [234E](#) of the Act. The Hon'ble High Court held as follows In para 22 to 24 which is reproduced as under:

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

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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."

8. We take note that the facts of the aforesaid case and the facts before us are similar. Only after 01.06.2015, the AO can levy fee under [section 234E](#) of the Act while processing the statement under [section 200A](#) of the Act and not before. Therefore, respectfully relying the order of the Hon'ble Karnataka High Court, the impugned intimation of the lower authorities levying fee under [section 234E](#) of the Act cannot be sustained in law.

Accordingly the intimation under [section 200A](#) as confirmed by the Ld. CIT(A) in so far as levy of fee under [section 234E](#) is set aside and fee levied u/s 243E in all the appeals are ordered to be deleted. However, the other adjustments made by the AO in the impugned intimation shall stand as such. "

6. In the appeals before us, the financial year involved is 2013-14. Therefore, respectfully following the precedent, we set aside the orders of lower authorities and delete the levy of fee u/s.234 E of the Act in all the quarters and allow the appeals filed by the assessee.

8. We on perusal of all the appeals under consideration find that the issue involved in the appeals i.e ITA Nos.323 to 331CTK/2018 are covered by the above orders of the Tribunal as the amendment to [Section 200\(3\)](#) of the I.T. Act was made only with effect from June 1, 2015.

Except for the Quarter-1 in the assessment year 2016-2017(i.e.ITA No.332/CTK/2018), all the quarters i.e. Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015-2016 are coming under the purview of amendment to [Section 200\(3\)](#) of the Act. Therefore, the fee levied u/s.234E of the Act while processing the statement of tax deducted at source was beyond the scope provided under [Section 200A](#) of the Act.

Accordingly, we respectfully follow the judicial precedent and set aside the orders of lower authorities and delete the levy of fee u/s.234E of the Act in Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015-2016 and allow the appeals i.e ITA Nos.323 to 331/CTK/2018 filed by the assessee.

9. With regard to the appeal filed by the assessee for Quarter-1 in assessment year 2016-2017(i.e. ITA No.332/CTK/2018), we considering the amendment to [Section 200\(3\)](#) of the Act and applicability to the present case of the assessee does not fall under the purview of amendment as the first quarter for the assessment year 2016-2017 ends on 30.06.2015 and the amendment is effective from 01.06.2015.

Therefore, we are of the opinion that the assessee is liable to pay the late fee as levied for the assessment year 2016-2017. Accordingly, we uphold the orders of lower authorities and dismiss the ground of appeal of the assessee.

10. In the result, appeals of the assessee i.e. ITA Nos. 323 to 331/CTK/2018 are allowed and ITA No.332/CTK/2018 is dismissed."

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8. We find that the Hon'ble Kerala High Court in the case of *United Metals vs. ITO* reported in [2022] 137 taxmann.com 115 (Kerala) whilst dealing with identical issue has held as under:-

"3. Though section 234E of the Act was introduced by the Finance Act, 2012 with effect from 1st July, 2012, since petitioner is being demanded by Ext.P1 late fee for not filing the statement of tax deduction at source, it is necessary to refer to section 200A of the Act. Section 200A(1) incorporated clause (c) to clause (f) with effect from 1-6-2015. Sub-clause to section 200A (1) refers to the fee if any to be computed in accordance with the provisions of section 200A(1)(e). It is the claim of the petitioner that till 1-6-2015 petitioner cannot be mulcted with any liability to pay late fee for non filing of any statement of tax deduction at source.

4. I have heard Smt.S.K.Devi, learned counsel for the petitioner, Sri.Christopher Abraham, learned Standing Counsel for the first respondent as well as Sri.S.Manu, learned Assistant Solicitor General of India for the second respondent.

5. Learned counsel for the petitioner brought to my attention the decision in Sarala Memorial Hospital v. Union of India [W.P. (C) No.37775 of 2018, dated 18-12-2018] wherein an identical question arose for consideration. After considering the statutory provisions and the implications of the amendment brought in to the Act, it was held that the amendment would take effect only with effect from 1st June, 2015 and is thus prospective in nature. It is submitted that the aforesaid judgment has become final and is binding upon the authorities.

6. In view of the above, the demand in Ext.P1 for the period from 2011-12 to the first quarter of 2015-16 is bereft of authority and cannot be legally sustainable."

9. As the facts of the instant case are identical to the facts of the case discussed in the above case-laws, respectfully following the decision of the Hon'ble Kerala High Court (supra) and consistent with the view taken by the Co-ordinate Bench of ITAT (supra), wherein it has been held that prior to the amendment made to Section 200A(C) of the Act w.e.f. 01/06/2015, the ld. Assessing Officer was not empowered to charge late filing fee u/s 234E of the Act and, therefore, in the bunch of instant appeal, since the date of passing the order in ITA Nos. 172, 173 & 177/GTY/2020 were prior to 01/06/2015, fee u/s 234E of the Act, could not be levied and the same is ordered to be deleted and as regards ITA No.

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174/GTY/2020, since the original date of processing is 18/08/2015, the assessee fails to get any relief.

10. In the result, ITA Nos. 172, 173 & 177/GTY/2020 are allowed while ITA No. 174/GTY/2020 is dismissed.

Order pronounced in the Court on 16th November, 2022 at Kolkata.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Kolkata, Dated 16/11/2022

SJC S.P.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण गुवाहाटी /DR,ITAT, Guwahati,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Guwahati