

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA Nos. 103 to 107/Lkw/2021
Assessment Years 2013-14 & 2015-16

Executive Engineer, Tubewell Division Barabanki, Abhay Nagar, Dewa Road, Barabanki. TAN – LKNT05243A (Appellant)	Vs	Income Tax Officer (TDS)-II, Lucknow (Respondent)
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Appellant by	Shri Shubham Rastogi, CA
Respondent by	Shri Amit Nigam, DR
Date of hearing	29/11/2022
Date of pronouncement	30/11/2022

ORDER

PER BENCH:

This is bunch of five appeals by the assessee is directed against the order of the Id. CIT(A)-2, Lucknow all dated 14.11.2019 and 18.11.2019 respectively for A.Ys. 2013-14 and 2015-16.

2. At the outset, Id. AR invited our attention to the petition for condonation of delay along with affidavit is on record which happens to be of 642 days. We note that the order of Id. CIT(A) is dated 14.11.2019 which was received by the assessee on 27.11.2019 the due date of filing of these appeals was on 27.01.2020. The Id. AR submitted that the Shri Rakesh Kumar Soni, Advocate was suffering from illness and was confined to bed during the period from 12.1.2020 to 11.02.2020. However, due to the mistake done by Office Assistant, the order was kept with the case record

of some other client and was not traceable and accordingly it prevented Shri Rakesh Kumar Soni from taking any further action. It was submitted that there was Covid-19 outbreak due to surge in Covid cases and owing to which the Executive Engineer, as per letter dated 30.06.2020 informed to Advocate Rakesh Kumar Soni that presently due to Covid-19 PANDEMIC situation it is not possible to provide the required details for filing of appeal. Without prejudice to the above, it was submitted that the Hon'ble Supreme Court had suo motu vide order vide order dated 10.01.2022 had extended the period of limitation and had excluded the period of limitation w.e.f. 15.3.2020 to 28.02.2022 to be excluded for the purpose of counting any limitation. Therefore, in view of these facts and circumstances, it was prayed that the delay in filing the appeals, being unintentional, be condoned and appeals be heard on merit.

3. The Id. DR did not raise any objection for condonation of delay in filing the appeals. Finding the reasons for delay in filing the appeals plausible because of the various reasons mentioned in the petition for condonation of delay we condoned the delay and Id. AR was asked to proceed with his argument.

4. Since a common issue relating to levy of fees u/s. 234E of the Act is involved in all these appeals, they are being disposed of by this consolidated order for the sake of convenience. Notice in this case was sent to the assessee. Common grounds involved in these appeals. One of the appeal i.e. ITA No. 103/Lkw/2021 are reproduced below for ready reference:

"1. The Ld. C.I.T.(A) erred on facts and in law in confirming levy of Late Fees of Rs. 34.122/- u/s 234E of I.T. Act, 1961 and Interest u/s 220(2) of I.T. Act, 1961 of Rs. 2,450/- in order passed u/s 200A of I.T. Act, pertaining to F. Y 2012-13 (For 3rd QTR in Form 26Q) without

appreciating that the Late Fee u/s 234E cannot be charged relating to the period of tax deduction prior to 01.06.2015.

2. The Ld. C.I.T. (A) erred on facts and in law in not considering that the mechanism provided for computation of fee and failure for payment of fee u/s 200A was brought on statute w. e. f. 01.06.2015 and thus, the said amendment is prospective in nature.
3. The Ld. C.I.T. (A) erred on facts and in law in not considering the ratio laid down by Hon'ble Jurisdictional Lucknow Tribunal in ITA No. 793, 794 and 795/LKW/2015 and the decision of co-ordinate benches where in the issue of 234E has held to be prospective.
4. The Ld. Cl.T. (A) erred on facts and in law in not considering that the decision of Hon'ble Gujarat High Court in the case of Rajesh Kournani Vs. UOI reported in 83 Taxmann.com 137 relied upon by the Ld. Cl.T.(A) has been distinguished by the Hon'ble Delhi Tribunal in the appeal of Udit Jain Vs. ACIT in ITA No. 5380/DEL/2017.
5. The Present Late Fee is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by the CIT(A)."

5. The assessee has contended that late fee u/s. 234E cannot be charged relating to period of tax deduction prior to 01.06.2015. He strongly submitted that the issue in hand is squarely covered by the decision of coordinate Bench of ITAT, Lucknow in ITA No. 793, 794 and 795/Lkw/2015, wherein issue of charging of late fee u/s.234E has been held to be prospective. Further Id. counsel submitted that synopsis of the due date and date of filing of TDS return in respect of the present five appeals, the same is reproduced below:

SYNOPSIS OF DUE DATE AND DATE OF FILING OF TDS RETURNS

ITA NO.	PERIOD	FORM NO.	Quarter	Amount of late fee u/s 234E	Amount of Interest u/s 220(2)	Due date for filing TDS returns	Date of filing of TDS return	Order processing date
104/LKW/2021	AY 2015-16 FY 2014-15	26Q	1	88400	1768	15.07.2014	30.09.2015	13.10.2015
105/LKW/2021	AY 2015-16 FY 2014-15	26Q	2	6600	3300	15.10.2014	03.12.2014	13.12.2014
106/Lkw/2021	AY 2015-16 FY 2014-15	26Q	3	8000	3854	15.01.2015	12.03.2015	15.03.2015
107/Lkw/2021	AY 2015-16 FY 2014-15	26Q	4	2800	1980	15.05.2015	29.05.2015	03.06.2015
103/LKW/2021	AY 2013-14 FY 2012-13	26Q	3	34122	2450	15.01.2013	03.09.2013	07.09.2013
	TOTAL			139922	13352			

6. Ld. counsel also placed on record the decision of coordinate Bench of ITAT, Lucknow in the case of Shivansh Infraestate Pvt. Ltd. vs. ACIT in ITA No. 121 to 125/Lkw/2022 dated 26.07.2022 which squarely covered the issue in hand. On identical fact pattern, the relevant extract from the said decision which are reproduced below as under:

7. We have heard the rival parties and have perused the material available on record. We find that it is undisputed fact that the assessee has been charged late fee u/s. 234E for various returns filed in the Form-26Q for late filing of the statements. These cases relate to Assessment Year 2014-15. The various Hon'ble High Courts including the Hon'ble Karnataka High Court and Hon'ble Kerala High Court have held that the provisions of Section 234E are applicable w.e.f. 01.06.2015. The relevant findings of Hon'ble Karnataka High Court in the case of 'Fatheraj Singhvi Vs. Union of India' (Supra) are in Para 21 to 23 and 26 are reproduced for the sake of completeness:

"21. 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 271H(3) that too by expressly put 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, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

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.

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26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.”

8. The Hon'ble Kerala High Court in the case of United Metals vs. ITO TDS,137 taxmann.com 115 (Kerala) has also held similarly and the Lucknow bench of the Tribunal in the case of Dr. Saumya Singh vs. ACIT in ITA No. 793, 794 and 795/Lkw/2017 has also recorded similar findings.

9. In view of these facts and circumstances and following the precedents relied on by the assessee, the appeals filed by the assessee are allowed.

10. In view of these facts and circumstances and following the precedent referred above the five appeals filed by the assessee are allowed.

11. In the result, all the appeals filed by the assessee are allowed.

(Order pronounced in the open court on 30/11/2022)

Sd/-
(MAHAVIR SINGH)
Vice President

Sd/-
(GIRISH AGRAWAL)
Accountant Member

Aks -

Dtd. 30 /11/2022

Copy of order forwarded to:

(1) The appellant

(3) Commissioner

(5) Departmental Representative

(2) The respondent

(4) CIT(A)

(6) Guard File

Assistant Registrar