

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 7593/Del/2017 (A.Y. 2014-15)
 ITA No. 7594/Del/2017 (A.Y. 2014-15)
 ITA No. 7595/Del/2017 (A.Y. 2014-15)
 ITA No. 7596/Del/2017 (A.Y. 2014-15)
 ITA No. 7597/Del/2017 (A.Y. 2014-15)
 ITA No. 7598/Del/2017 (A.Y. 2015-16)
 ITA No. 7599/Del/2017 (A.Y. 2015-16)
 ITA No. 7600/Del/2017 (A.Y. 2015-16)

P3P Ventures Pvt. Ltd., Flat No. 1401, Tower No. 22, Orchid Petals, Sector-49, Sohna Road, Gurgaon, Haryana-122001.	<u>Vs</u>	DCIT, CPC(TDS), Ghaziabad.
PAN- AAHCP0844K		
APPELLANT		RESPONDENT
Assessee represented by	Shri Anil Jain, Adv.	
Department represented by:	Shri Sumesh Swani, Sr. DR	
Date of hearing	08.12.2022	
Date of pronouncement	15.12.2022	

ORDER

PER KUL BHARAT, JM:

The captioned appeals, preferred by the assessee, are directed against separate orders of the Assessing Officer passed for levying late fee penalty u/s

234E for late filing of TDS statements for 2nd, 3rd and 4th Quarters of Form 26Q and 4th Quarters of Form 27Q and 24Q for assessment year 2014-15 and for late filing of TDS statement for 1st, 2nd and 3rd quarters of Form 26Q for Assessment year 2015-16. All these appeals are taken up together and are being disposed of by way of a consolidated order. ITA no. 7593/Del/2017 is being taken up as a leading case.

2. At the outset it is submitted that TDS return for F.Y. 2013-14 and 2014-15 (total no. 8) were filed late but all before 13.3.2015 and order u/s 200A charging fee u/s 234E was passed before 19.3.2015 i.e. prior to 1.6.2015. Learned counsel for the assessee drew my attention to the chart. For the sake of convenience the chart filed by the assessee is reproduced as under:

Financial year 2013-14 Asstt. Year 2014-15

<i>Qr.</i>	<i>Form No.</i>	<i>Due Date</i>	<i>Date of filing</i>	<i>Delay</i>	<i>Interest paid</i>	<i>Late fee charged u/s 234E</i>	<i>Date of order</i>
2 nd	26Q	15.10.2013	18.9.2014	338	32202	67600	23.9.2014
3 rd	26Q	15.01.2014	05.11.2014	294	16466	58800	212.11.2014
4 th	26Q	15.05.2014	05.11.2014	174	6752	34800	12.11.2014
4 th	27Q	15.05.2014	05.11.2014	174	0	34800	12.11.2014
4 th	24Q	15.05.2014	12.01.2015	242	19074	48400	16.1.2005
						244400	

Financial year 2014-15 Asstt. Year 2015-16

<i>Qr.</i>	<i>Form No.</i>	<i>Due Date</i>	<i>Date of filing</i>	<i>Delay</i>	<i>Interest paid</i>	<i>Late fee charged u/s 234E</i>	<i>Date of order</i>
<i>1st</i>	<i>26Q</i>	<i>15.07.2014</i>	<i>13.03.2015</i>	<i>241</i>	<i>813</i>	<i>11930</i>	<i>19.03.2015</i>
<i>2nd</i>	<i>26Q</i>	<i>15.10.2014</i>	<i>13.03.2015</i>	<i>149</i>	<i>1822</i>	<i>21500</i>	<i>19.03.2015</i>
<i>3rd</i>	<i>26Q</i>	<i>15.1.2015</i>	<i>13.03.2015</i>	<i>57</i>	<i>8343</i>	<i>11040</i>	<i>19-3-2015</i>
						<i>44470</i>	

3. It is contended that under identical facts the Division Bench of this Tribunal in the case of ICMC Projects Pvt. Ltd. Vs. ITD, CPC, Bengaluru & others (ITA no. 1361/Del/2021 & others order dated 25.02.2022) has decided the issue in favour of the assessee.

4. Learned counsel has placed reliance on the decision of Division Bench of Indore Bench this Tribunal rendered in the case of Sukhmani Automobiles & Ors. Vs. ITO, TDS, Indore & Ors. [ITA nos. 412, 413, 424 & 425/Ind/2019 dated 19.03.2020]; and the judgment of the Hon'ble Karnataka High Court rendered in the case of Fatheraj Singhvi and Ors. Vs. Union of India and Ors. [Writ Appeal nos. 2663-2674/2015(T-IT) dated 16.08.2016].

5. Learned DR opposed the submissions and supported the orders of the authorities below.

6. I have heard rival contentions and perused the material available on record. I find that the Division Bench of this Tribunal under identical facts has decided the issue in a bunch matter in ITA nos. 1361/Del/2021 & others ICMC Projects Pvt. Ltd. Vs. ITD, CPC, Bengaluru, by holding as under:

“5. In the absence of any machinery provisions to charge the late fee u/s 200A, the issue of levy of fee u/s 234E which was introduced w.e.f. 01.06.2015 has been examined in the context of its applicability whether retrospective or prospective.

6. The Hon'ble Karnataka High Court in case of Fatehraj Singhvi & Ors. vs. UOI & Ors. 2016 (9) TMI 964 is in favour of the assessee holding that the amendments brought in statute w.e.f. 01.06.2015 are prospective in nature and as such, notices issued u/s 200A of the Act for computation and intimation of payment of late filing fee u/s 234E of the Act relating to the period of tax deduction prior to 01.06.2015 was not maintainable.

7. At the same time, the Hon'ble Gujarat High Court in case of Rajesh Kourani vs. UOI (2017) 83 taxmann.com 137 has decided the issue against the assessee.

8. Under these circumstances, we are of the considered view that the decision rendered by Hon'ble Supreme Court in the case of Vegetable products Limited 88 ITR 192 (SC) pronouncing that, when there are conflicting decisions the view taken in favour of the assessee should be owed is relevant to adjudication of the matter before us. Hence, the impugned order passed by the First Appellate Authorities confirming the late fee levied by the AO u/s 200A read with section 234E in all the cases wherein the defaults were prior to 01.06.2015 is not sustainable in the eyes of law.

9. As a result, the fee levied u/s 234E is hereby ordered to be deleted.”

7. The Revenue has not brought to my notice any other binding precedence in favour of the Revenue. Therefore, respectfully following the ratio of decision of

Division Bench of this Tribunal (supra), I hereby direct the Assessing Officer to delete the impugned penalty. This finding would also apply to other appeals of this bunch (ITA nos. 7594/Del/2017 to 7600/Del/2017).

8. Assessee's appeals stand allowed.

Order pronounced in open court on 15th December, 2022.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**