

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.666 to 669/Hyd/2022		
Assessment Years: 2013-14 to 2016-17		
Nirmala Infra Projects India (P) Ltd, Hyderabad. PAN: AACCN9145Q	Vs.	Dy.CIT Circle 5(1), Hyderabad & Income Tax Officer Ward TDS-2 (1) Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri Kumar Pal Tated, CA	
Revenue by:	Shri M. Murali Mohan.	
Date of hearing:	12/12/2022	
Date of pronouncement:	12/12/2022	

ORDER

PER BENCH :

The above four appeals filed by the assessee are directed against the order dated 28.09.2022 of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi relating to A.Ys.2013-14 to 2016-17

2. All these appeals are related to levying of late fee u/s 234E for delay in filing the TDS statements for the period prior to 01.06.2015 i.e. the date from which the clause (c) of sub section (1) of section 200A was inserted incorporating the section 234E of the Income Tax Act, 1961. Prior to 01.06.2015, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E, except the appeal ITA No.669/Hyd/2022 which is pertaining to the period after 01.06.2015.

3. The provision of section 234E of the Income Tax Act, 1961 is charging provision i.e. substantive provision, which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fee for any delay in filing the TDS statement for the period prior to 01.06.2015.

4. It was submitted by the ld. AR that similar view may be taken in respect of the matter which are prior to 01.06.2015 and the remaining matters be decided in accordance with law.

5. On the other hand, the ld. DR for the revenue relied upon the orders passed by the lower authorities and had submitted that the appeals filed by the assessee are required to be dismissed.

6. 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.

7. 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 are 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), M/s. S.P.R. Constructions Vs. ITO, M/s. Swarup Hospitals Private

Limited Vs. Addl.CIT(TDS) and Elite Engineering and Construction (Hyd) Pvt. Ltd., Vs. ITO.

8. 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, 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 that the issue is in favour of the assessee and direct the learned Assessing Officer to delete the addition made under section 234E of the Act.

9. In view of the binding decisions referred herein above, we hereby allow the first three appeals filed by the assessee i.e. ITA No.666 to 668/Hyd/2022.

10. In the result, the appeals of assessee in ITA Nos.666 to 668/Hyd/2022 are allowed.

ITA No. 669/Hyd/2022

11. With respect to ITA No.669/Hyd/2022 as mentioned hereinabove the appeal pertains to the financial year 2015-16, after the insertion of the clause to 234E read with 200A with effect from 1 June 2015. It was contended by Id.AR that the

assessee is entitled to the benefit of coordinate bench decision for the Month of April and May 2015, as the amendment came into force only on 1.6.2015. In this regard, the learned AR submitted that the benefit of first quarter may kindly be extended though the assessee has filed appeal for all the four quarters.

However, the learned DR submitted that the amendment in the Act came into effect on 1.6.2015, therefore, the assessee is only entitled to the benefit for the months of April & May, 2015. Ld.DR further submitted that the constitutional validity of the amendment had been tested by the Hon'ble Delhi High Court, Bombay High Court and Kerala High Court and all the Courts have consistently come to the conclusion that the provision inserted by the finance Act 2015 were in accordance with law and no interference is required. Admittedly, there was delay in filing the return of the TDS and therefore, the late fees as required under the provision of section 234E has to be levied on the assessee.

12. We have heard the rival contentions of the parties and perused the material available on record. In our view, the fees levied for the month of April / May 2015 can not be sustained as the amendment came into force w.e.f 1/6/2015. Hence, respectfully following the judgments of the Hon'ble Delhi High Court, Bombay High Court and Kerala High Courts and further all the coordinate Benches are consistently come to the conclusion that the provision inserted by the finance Act, 2015 was effective from 1/6/2015, therefore we partly allow the appeal of the assessee in the terms mentioned herein above. Thus, the appeal of assessee in ITA No.669/Hyd/2022 is partly allowed.

13. In the result, appeal of assessee in ITA No.669/Hyd/2022 is partly allowed.

14. To sum up, the appeals of assessee in ITA Nos.666 to 668 are allowed and the appeal of assessee in ITA No.669/Hyd/2022 is partly allowed.

Order pronounced in the Open Court on 12th December,2022

Sd/- (R.K. PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 12th December, 2022.

Vinodan/sps

Copy to:

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3	Income Tax Officer Ward TDS-2(1), Hyderabad
4	CIT (A)- NFAC, Delhi
5	Pr. CIT-, Hyderabad
6	DR, ITAT Hyderabad Benches
7	Guard File

By Order