

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

|   |     |   |
|---|-----|---|
| ITA.No.119/Hyd/2023   |     |   |
| Assessment Year: 2014-15  |     |   |
| Ochre Media Private Limited,<br>Secunderabad.<br>PAN : AAACO9391H | Vs. | Income Tax Officer,<br>Ward (TDS) 2(1),<br>Hyderabad. |
| (Appellant)   |     | (Respondent)  |
| Assessee by:  |     | Shri H. Srinivasulu                                   |
| Revenue by:   |     | Shri Kumar Adithya                                    |
| Date of hearing:  |     | 20.03.2023  |
| Date of pronouncement:  |     | 23.03.2023  |

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) Delhi, dt.20.12.2022 for the assessment year 2014-15 on the following grounds :

*"1. The Ld.ITO Ward (TDS), 2(1) Hyderabad (A.O) erred on facts and in law while processing and levying of late filing fees u/s 234E together with interest u/s 220(2) without giving an opportunity of being heard.*

*2. The Ld CIT(A), NFAC erred in upholding the levy of FEE U/s 234E amounting to Rs.2,32,800 and interest thereon amounting to Rs. 1,11,970 aggregating to Rs 3,44,770/- for financial 2013-14 by the ITO, ward (TDS), 2(1), Hyderabad.*

*3. The Ld CIT(A), NFAC, failed to appreciate that section 200A(1)(c) was inserted by the Finance Act, 2015. W.e.f 01.06.2015 to impose the late fee Rs. 200 per day U/s 234E. The Assessee filed the TDS, Quarterly returns F.Y 201-14 late and there was no provision to charge or impose late fee U/s 234E in F.Y 2013-14.*

4. *The Ld CIT(A), NFAC, failed to appreciate that charging and procedural sections go together and in the absence of procedural sections, no late fee u/s 234E can levied.*

5. *The Ld CIT(A), NFAC failed to follow the jurisdictional Tribunal decision in the case of Sr K.V. Subramanyam ITA No: 502/HYD/2022 which is binding on the ITO (TDS), 2(1), Hyderabad and CIT(A), NFAC.*

6. *The Ld CIT(A), NFAC, failed to appreciate that the fee levied U/s 234E is not for rendering any service to the assessee and in Substance it is Penal in Nature.*

7. *The Ld CIT(A), NFAC, Failed to appreciate that section 200 A (1) (c) Cannot be invoked retrospectively i.e F.Y 2013-14 as Section 200 A(1)(c) was inserted w.e.f 01.06.2015.*

8. *The CPC while processing the TDS returns did not charge fee U/s 234E and Ld A.O without following the provisions of Section 200A(1) had levied the Late fee U/s 234E.*

2. The brief facts of the case are that assessee is a company engaged in the Media business. In the present case, assessee filed its TDS quarterly statements for all four quarters of F.Y. 2013-14 belatedly i.e., after the due date. Hence, the total amount demanded from the assessee for the said financial year was Rs.3,44,770/- comprising late filing fees u/s 234E of the Act at Rs.2,32,800/- and interest of Rs.1,11,970/- u/s 220(2) of the Act.

3. Feeling aggrieved with the order passed by the ITO, WARD (TDS), 2(1), Hyderabad u/s 200A(1) of the Act, assessee filed the present appeal before the ld.CIT(A) who dismissed the appeal of assessee.

4. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

5. It is the contention of the assessee before us that the respondent had levied late fee u/s. 234E for a period prior to 01.06.2015 which is not maintainable and further submitted that Assessing Officer has no power under Sec.200A to levy any late fee U/s. 234E prior to amendment of law on 01.06.2015 and relied on the decision in the case of FATHERAJ SINGHVI & ORS VS. UNION OF INDIA (2017) reported in 10 ITR-OL 509 (Kar).

6. Per contra the ld. LD. DR strongly relied upon the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. In the present case, the AO imposed late fees u/s 234E of the Act., where the enabling clause (c) was inserted in the section 200A w.e.f. 01.06.2015 and the same has been confirmed by the Ld. CIT(A) relying on the decision of Hon'ble Gujarat High Court in the case of 'Rajesh Kaurani vs. Union of India. We find that late filing fee u/s 234E of the Act has not rightly been charged in the intimation issued u/s 200A/206CB of the Act while processing the TDS returns/statements as the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. Earlier, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for a period up to 29.06.2014, no late fee could be levied in the intimation issued u/s 200A of the Act. The details of the TDS deduction and statement filed by the assessee are available on record which were not disputed by the Revenue.

5. We further find that an identical issue arose before the Co-ordinate Bench of Agra Tribunal in the case of Garrison Engineer (E/M) Vs. JCIT (TDS) (ITA No.128/AGR/2021 dt.22.03.2022), wherein the co-ordinate Bench of the Tribunal had allowed the appeal of the assessee by holding as under :

5. *On similar facts, the same issue has been adjudicated by the Co-ordinated bench ITAT Agra, in the case of 'Sudershan Goyal vs. DCIT (TDS)' in ITA No. 442/Agra/2017 vide order dtd. 09.04.2018. The relevant part of the order is reproduced as follows:*

*"3. Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOI', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in 'Rajesh Kaurani' (supra) holds the field.*

*4. We do not find the view taken by the ld. CIT(A) to be correct in law. As against 'Rajesh Kaurani' (supra), 'Shri Fatehraj Singhvi and Others vs. UOI', 73 com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing 'Rajesh Kaurani' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.*

*5. In 'Shri 'Fatehraj Singhvi and Others' (supra) it has been held, inter alia, as follows:*

*"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.” 6. In view of the above, respectfully following ‘Shri Fatehraj Singhvi and Others’ (supra), ‘Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)’, order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and ‘Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad’, order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled.”*

*6. In the above view, respectfully following ‘Shri Fatehraj Singhvi and Ors’ (Supra), and our own finding in the case of ‘Sudershan Goyal’ (Supra), we accept the grievance of the assessee as genuine. Accordingly, the orders of the CIT(A) are reversed, and the fee so levied under section 234E of the Act is cancelled.*

*7. In the result, all the appeals are allowed.*

6. In view of the above discussions and in view of the support drawn from the decision of Co-ordinate Bench of the Tribunal in the case of Garrison Engineer (E/M) Vs. JCIT (TDS) (supra), we accept the grievance of the assessee as genuine. As such, the order of ld.CIT(A) is annulled and thus, the appeal is allowed in favour of the assessee by cancelling the fee so levied under section 234E of the Act.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 23<sup>rd</sup> March, 2023.

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| <b>Sd/-</b><br><b>(RAMA KANTA PANDA)</b><br><b>ACCOUNTANT MEMBER</b> | <b>Sd/-</b><br><b>(LALIET KUMAR)</b><br><b>JUDICIAL MEMBER</b> |
|--|--|

Hyderabad, dated 23<sup>rd</sup> March, 2023.

***TYNM/sps***

Copy to:

| S.No | Addresses  |
|------|--|
| 1    | Ochre Media Private Limited, 9-1-129/1, 2 <sup>nd</sup> Floor<br>Oxford Plaza, S.D. Road, Secunderabad – 500003. |
| 2    | Income Tax Officer, Ward (TDS) 2(1), Hyderabad.  |
| 3    | DR, ITAT Hyderabad Benches   |
| 4    | Guard File   |

*By Order*