

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM 'SMC' BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.74 TO 89/Viz/2023
(निर्धारण वर्ष / Assessment Years: 2014-15 to 2017-18)

SVVSSDSS School,
Annaram.

PAN: AFIPA 2580 C

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. Income Tax Officer,
TDS, Ward-1,
Rajahmundry.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, Advocate

Sri ON Hari Prasada Rao,
Sr. AR

16/03/2023

03/04/2023

ORDER

PER DUVVURU RL REDDY, Judicial Member :

All the captioned appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals) [Ld. CIT(A)], National Faceless Appeal Centre (NFAC), Delhi in various orders dated 03/01/2023 for the AYs 2014-15 to 2017-18. Since the issues involved in all the appeals are identical, for the sake of

convenience, these appeals are clubbed, heard together and disposed off in this consolidated order.

I.T.A. No.74 TO 81/Viz/2023

(AY: 2014-15 & 2015-16)

2. The assessee has raised four identical grounds in all the appeals pertaining to AY 2014-15 and 2015-16. Therefore, for the sake of reference the grounds of appeal raised in **ITA No.74/Viz/2023** are extracted herein below:

- "1. The CPC-TDS is not correct in levying the late filing fee U/s. 234E of the Income Tax Act, 1961.*
- 2. The CPC-TDS erred in law to charge the fees U/s. 234E of the Income Tax Act, 1961 by way of intimation issued U/s. 200A of the Income Tax Act, 1961 in respect of defaults before 01/06/2015.*
- 3. The CIT(A) should have seen that there is a reasonable and genuine reason for delay in filing of quarterly statements.*
- 4. Any other ground that may be urged at the time of hearing of the appeal."*

3. Brief facts pertaining to the instant appeal (ITA No. **74/Viz/2023**) are that the assessee is an Educational Institution and provides education to the students in Annavaram and is run by Annavaram Devasthanam. For the FY 2013-14 relevant to the AY 2014-15 the assessee filed the Quarterly TDS returns after the

due date. These TDS returns were processed by the Income Tax Department and intimations u/s. 200A of the Act were issued. In the intimations, the Ld. AO had levied late filing fee u/s. 234E of the Income Tax Act, 1961 and raised the demand. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). On appeal, the Ld. CIT(A)-NFAC observed that as the amendment in section 200A brought in by the Finance Act 2015 is prospective in nature and therefore the Ld. AO is justified in levying of late fee u/s. 200A r.w.s 234E since the defaults are subsequent to 1/6/2015. Accordingly, the Ld. CIT(A)-NFAC, dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal.

4. Before me, at the outset, it is the contention of the Ld. Authorized Representative [Ld. AR] that the enabling provision for computation of fee while processing the statements was inserted in section 200A only w.e.f 1/6/2015 and therefore, the charging section i.e., section 234E cannot be enforced prior to 1/6/2015. The Ld. AR further submitted that the amended provision applies for all the returns pertaining to the period after 1/6/2015 and not for the returns pertaining to the period prior to 01/06/2015

notwithstanding the fact that the returns pertaining to the period prior to 01/06/2015 were filed after 01/06/2015 or processed after 01/06/2015. The Ld. AR further submitted that in the present case, the due date for filing the TDS returns is 15/07/2013 (For Q1 of FY 2013-14) and the TDS returns were filed on 09/12/2015 therefore section 234E cannot be enforced since it is prior to 1/6/2015. The Ld. AR therefore submitted that the Ld. Revenue Authorities erred in levying and confirming the levy of late fee U/s. 234E of the Act while processing the TDS return U/s. 200A of the Act for the relevant period under consideration. In support of his view the Ld. AR relied on the judgment of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India [2016] 73 taxmann.com 252 (Karnataka); judgment of the Hon'ble Kerala High Court in the case of United Metals vs. ITO (TDS) reported in [2022] 137 taxmann.com 115 (Kerala); decision of the Pune Bench of the Tribunal in the case of Medical Superintendent Rural Hospital, Nashik vs. DCIT, CPC (TDS), Ghaziabad in ITA Nos. 651 to 661/Pun/2018, dated 25/10/2018. The Ld. AR further submitted that since the Ld.CIT(A) relied only the judgments of the Hon'ble Bombay High Court in the case of Rashmikat Kundalia (supra) as well as the judgment of the Hon'ble Gujarat

High Court in the case of Rajesh Kourani vs. Union of India (supra) and ignored the ratio laid down by the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi (supra); judgment of the Kerala High Court in the case of United Metals (supra) and decisions of various Benches of the Tribunal which is against the spirit and the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. M/s. Vegbetable Products Ltd (1973) 88 ITR 192 (SC) wherein it was held that *when there is difference of opinion between different High Courts on the an issue, the one which is in favour of the assessee needs to be followed*. The Ld. AR therefore pleaded that the decision of the Ld. Revenue Authorities may be set-aside and the assessee may be granted relief by deleting the late fee levied U/s. 234E of the Act.

5. On the other hand, Ld. Departmental Representative heavily relied on the decision of the Ld. CIT(A) who confirmed the levy / imposition of late fee u/s. 234E of the Act by the Ld. AO. It is the submission of the Ld. DR that since the assessee filed its TDS statement beyond the stipulated time as per the TDS provisions, the late fee levied on account of default in furnishing the statements beyond the prescribed time limit is as per the provisions of the IT Act, 1961. The Ld. DR further submitted that

the fee charged U/s. 234E is not in lieu of penalty as the fee charged under section 234E is not in the nature of penalty and is a fee which the deductor shall be liable to pay in the event of delay in filing the TDS statements as prescribed. The Ld. DR further submitted that the Fee charged U/s. 234E is a fixed fee charged in the case of statements are rendered beyond the stipulated time which is happened in the instant case. The Ld. DR also submitted that it is rightly observed by the Hon'ble Bombay High Court in the case of Rashmikant Kundalia vs. Union of India (supra) *"because of late filing of TDS statements Department is overburdened with extra work which is otherwise not required if the TDS statements are furnished within the prescribed time limit."* The Ld. DR also heavily relied on the decision of the Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. Union of India (supra) for the proposition that *"a machinery provision (section 200A) cannot override the substantive provision of law"*. The Ld. DR therefore pleaded that since the action taken by the Ld. Revenue Authorities is in accordance the provisions of the Act and also in accordance with law, as discussed above, and hence the order of the Ld. Revenue Authorities need not be disturbed / interfered with.

6. I have heard both the sides, perused the material available on record as well as the orders of the Ld. Revenue Authorities. The main question that arises in this appeal is whether TDS returns pertaining to the period prior to 01/06/2015, if filed after 01/06/2015 and processed after 01/06/2015 whether they attract the amended provisions of Finance Act, 2012 and the specific provision for levy of "fee" under section 234E of the Act which was inserted w.e.f 1/6/2015. In the present case the assessee filed its TDS statement for the 1st Quarter of FY 2013-14 on 09/12/2015 whereas the due date for filing the TDS returns is 15/07/2013. The Ld. AO treating this filing / furnishing of TDS statement as a default since it is not filed within the stipulated time as per the TDS provisions and imposed late fees u/s. 234E of the Act. On appeal, the Ld. CIT(A) confirmed the action of the Ld. AO and dismissed the assessee's appeal.

7. Considering the facts of the present case, I am of the considered view since the enabling provision for computation of fee while processing the statements was inserted in section 200A only w.e.f 1/6/2015 and therefore, the charging section i.e., section 234E cannot be enforced to the cases prior to 1/6/2015. Further, I am of the view that the amended provision applies for

all the returns pertaining to the period after 1/6/2015 and not for the returns pertaining to the period prior to 01/06/2015 notwithstanding the fact that the returns pertaining to the period prior to 01/06/2015 were filed after 01/06/2015 or processed after 01/06/2015.

8. The Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India [2016] 73 taxmann.com 252 (Karnataka) observed that *"one may at the first blush say that, since the section 234E is a charging section for fee, the liability was generated or had accrued, if there was failure to deliver or cause to be delivered the statement/s of TDS within the prescribed time. But section 234E cannot be read in isolation and is required to be read with the mechanism and the mode provided for its enforcement....."*. The observations and relevant held portions in the judgment of the Hon'ble Karnataka High Court (supra) are extracted herein below for reference:

"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."

9. Further, the Hon'ble Kerala High Court in the case of United Metals vs. ITO (TDS) reported in [2022] 137 taxmann.com 115 (Kerala) observed as under:

"Amendment in section 200A by way of incorporating sub-clause (c) to clause (f) which referred to computation of fee payable under section 234E was brought into effect from 1/6/2015, therefore, demand raised for levying late fee under section 234E for period prior to 1/6/2016 would not be sustainable."

10. The Pune Bench of the Tribunal vide its order dated 25/10/2018 in the case of Medical Superintendent Rural Hospital, Nashik vs. DCIT, CPC (TDS) (supra), has observed as under:

"16.....the Assessing Officer while processing TDS returns / statements for the period prior to 01/06/2015 was not empowered to charge late filing fees under section 234E of the Act, even in the cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after June, 2015. Accordingly.....the demand raised by charging late filing fee u/s 234E of the Act is not valid and the same is deleted."

11. Thus, in the instant case since the period of default was before the said date ie., 01/06/2015, there is no merit in charging late filing fee U/s. 234E of the Act. Accordingly the Ld. AO is directed to delete the fee levied U/s. 234E of the Act in the order passed U/s. 200A of the Act. Since I hold that the no late filing fee is to be charged, the consequential interest charged U/s. 220(2) of the also does not survive. Thus, the grounds raised by the assessee are allowed.

12. With respect to **ITA Nos. 75 to 81/Viz/2023**, the grounds of appeal as well as the issue raised in these appeals are identical to that the of the grounds and the issue raised in the

appeal **ITA No. 74/Viz/2023**, which is adjudicated in the above paragraphs of this order, my decision given thereof *mutatis mutandis* applies to the present appeals (**ITA Nos. 75 to 81/Viz/2023**) also. Accordingly, the appeals filed by the assessee are allowed.

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

ITA Nos. 82 to 89/Viz/2023
(AYs: 2016-17 & 2017-18)

14. These appeals are filed by the assessee against the orders of the Ld. CIT(A)-NFAC, Delhi dated 03/01/2023 arising out of the orders passed u/s. 200A of the Act for the AYs 2016-17 & 2017-18.

15. The assessee has raised the following identical grounds of appeal in its appeals:

- "1. The CPC-TDS is not correct in levying the late filing fee U/s. 234E of the Income Tax Act, 1961.*
- 2. The Commissioner of Income Tax (appeals) should have seen that there is a reasonable and genuine reason for delay in filing of Quarterly statements.*
- 3. Any other ground that may be urged at the time of hearing of the appeals."*

16. The crux of the issue involved in these appeal is whether the return pertaining to the period prior to 01/06/2015 but filed after 01/06/2015 and processed after 01/06/2015 attract the amended provisions of section 200A read with section 234E inserted w.e.f 01/06/2015 which is a specific provision for levy of fee for default in furnishing the TDS statements belatedly.

17. In the assessee's appeal **ITA No. 82/Viz/2023**, which is taken as lead appeal considering the similarity of the facts in all the instant appeals, the assessee filed its TDS statement for the 1st Quarter of FY 2015-16 on 09/12/2015 whereas the due date for filing of the TDS returns is 15th July, 2015. Accordingly, the Ld. AO vide order passed U/s. 200A, dated 12/12/2015 imposed a late fees U/s. 234E of the Act. In this case since the assessee has filed its TDS returns on 09/12/2015 whereas the due date is 15th July, 2015 which is after the date of insertion of specific provision for levy of late fee U/s. 234E ie., 01/06/2015. Therefore, the action taken by the Ld. AO in levying the late fee for default in furnishing the TDS statement beyond the stipulated time is in accordance with law. As well, the decision of the Ld. CIT(A), NFAC, Delhi in confirming the order of the Ld. AO cannot find fault with. Therefore, I have no hesitation to come to a

conclusion that the orders of the Ld. Revenue Authorities invoking the provisions of section 234E in order to levy late fee for default in furnishing the TDS statement beyond the stipulated time is in accordance with law and accordingly the grounds raised by the assessee are hereby dismissed.

18. With respect to **ITA Nos. 83 to 89/Viz/2023**, since the issue involved in all these appeals are identical to that of the issue adjudicated by me while deciding the assessee's appeal ITA No. 82/Viz/2023 (supra), my decision given therein mutatis mutandis applies to these appeals also. Accordingly, all the grounds raised by the assessee in these appeals are **dismissed**.

19. In the result, eight appeals filed by the assessee are dismissed.

Pronounced in the open Court on 03rd April, 2023.

Sd/-
(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)
न्यायिकसदस्य/JUDICIAL MEMBER

Dated : 03/04/2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- SVVSSDSS School, Beside NH-5, Annavaram-533406.
2. राजस्व/The Revenue – Income Tax Officer, TDS Ward-1, Income Tax Office, D.No.46-20-15, Danavaipeta, Rajahmundry.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam