

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 43 to 47/Ind/2023
(Different periods as mentioned below)

Noble Friends Foundation, 1, National Public School, Airport Road, Indore	<u>बनम/</u> Vs.	AO, CPC-TDS
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AAATN3869J / TAN: BPLN00594G		
Assessee by	Shri Arpit Gaur, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	18.04.2023	
Date of Pronouncement	19.04.2023	

आदेश / O R D E R

Per Bench:

1. These appeals by assessee are directed against different orders of first-appeals passed by learned CIT(A)-National Faceless Appeal Centre [**Ld. CIT(A)**] as per details given below upholding the levy of late-fee u/s 234E:

Sl.	ITA No.	A.Y.	Quarter	Form type	Amount of late fee u/s 234E and interest	First-Appeal No.	Date of order passed by CIT(A)
1	43/Ind/2013	2013-14	II	26Q	82,320	CIT(A), Bhopal-2/10052/2017-18	12.12.22
2	44/Ind/2013	2013-14	III	26Q	38,133	CIT(A), Bhopal-2/10053/2017-18	12.12.22
3	45/Ind/2013	2013-14	IV	24Q	22,960	CIT(A), Bhopal-2/10055/2017-18	12.12.22
4	46/Ind/2013	2013-14	IV	26Q	22,960	CIT(A), Bhopal-2/10054/2017-18	12.12.22
5	47/Ind/2013	2014-15	II	26Q	15,070	CIT(A), Bhopal-2/10056/2017-18	12.12.22

2. We have heard the learned Representatives of both sides and perused the materials available on record.

3. Precisely stated the facts leading to these appeals are such that the assessee filed statutory returns of TDS for various periods as mentioned in the foregoing para, which were processed by Ld. AO who observed that the returns were filed belatedly beyond the time-limit prescribed in section 200(3) of the act. Accordingly, the Ld. AO charged late-fee u/s 234E of the Act as per the time-period of delay committed by assessee, in the intimations issued u/s 200A of the Income-tax Act, 1961. Being aggrieved, the assessee carried the matter in appeal before Ld. CIT(A) but, however, did not get any success.

4. Still being aggrieved by order of Ld. CIT(A), the assessee has now come in appeal before us.

5. Ld. AR submits that impugned late-fee charged by Ld. AO is for the period prior to 01.06.2015 when there was no power in section 200A to levy such late-fee; therefore the late-fee charged by authorities is without any authority of law and deserves to be quashed. Ld. AR submits that the section 200A(1) was amended w.e.f. 01.06.2015 by inserting clause (c) therein and it is only thereafter that the authorities were enabled to charge late-fee in the intimations u/s 200A. Therefore, it is very much clear that the authorities did not have any power to charge late-fee in respect of returns related to the period prior to 01.06.2015. In support of this proposition, Ld. AR relied upon certain decisions of different Courts / Benches of ITAT including the decisions of ITAT, Indore Bench itself in **ITA Nos. 510/Ind/2019 in case of M/s. Keshav Industries Pvt. Ltd. & ITA Nos. 500 to 508/Ind/2019 Mr. Rajendra Prasad Tiwari, order dated 14.07.2020**. The relevant paras of decision are reproduced below:

“10. We also observe that the Co-ordinate Bench Agra in the case of Sudershan Goyal Vs DCIT (TDS) ITA No.442/Agra/2017 order dated 09.04.2018 considering the similar issue deciding in favour of the assessee observed as follows:-

“The issue involved in this appeal is as to whether late filing fee u/s 234E of the IT Act has rightly been charged in the intimation dated 10.11.2013 issued u/s 200A of the Act while processing the TDS returns/statement, the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. Before 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. As such, as per the assessee, in respect of TDS statement filed for a period prior to 01.06.2015, no late fee could be levied in the intimation issued u/s 200A of the Act.

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 I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 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 *Taxmann.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, I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 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, I.T.A No. 442/Agra/2017 & S.A. No. 01/Agra/2018 the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

11. We, therefore respectfully following above decisions are of the opinion that in the given set of facts of the instant appeals wherein fee u/s 234E of the Act was levied in the statements processed u/s 200A of the Act before 01.06.2015 i.e. before the amendment brought into effect from 01.06.2015 in section 200A of the Act thereby enabling the revenue authorities to raise demand in respect of levy of fees u/s 234E of the Act, Ld. CIT(A) erred in confirming the levy of late fees u/s 234E of the Act by the assessing officer. Accordingly findings of Ld. CIT(A) in all these 10 appeals are reversed as we have recently taken a considered view

against the revenue on earlier orders of Ld. CIT(A) wherein the identical orders by respective CIT(A) were passed and accordingly the revenue is directed to delete the levy of fees u/s 234E of the Act in all these 10 cases. Thus, common issue raised in these bunch of appeals is decided in favour of the assessee(s).

12. *In the result, all 10 appeals at the instance of assessee(s) are allowed.”*

This aforesaid decision was again followed recently by the **Co-ordinate Bench of ITAT, Indore** in **M/s Divisional Forest Officer, Indore Vs. DCIT, CPC, TDS, Gaziabad, ITA No. 42 to 46/Ind/2020 order dated 29.09.2022.**

6. Respectfully following the view taken in above decisions, we have no hesitation in concluding that the late-fee u/s 234E levied by AO for the period prior to 01.06.2015 in the intimations made u/s 200A is illegal, without authority of law and deserves to be deleted. We, therefore, direct the AO to rectify the intimations and delete the late-fee charged therein alongwith consequential interest, if any. Thus, the assessee succeeds in these appeals.

7. In the result, these appeals of assessee are allowed.

Order pronounced in the open court on 19.04.2023.

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 19.04.2023

Patel/Sr. PS

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	