<u>आयकर अपीलीय अधिकरण 'बी' न्याय□पीठ चेन्नई में।</u>
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

मा□नीय श्री मनोज कुमा□ अग्रवा□ल ,लेखा□सदस्य एवं□
मा□नीय श्री मनोमोहन दास न्यायिक सदस्य क□समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON'BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

1. आयकर अपील सं./ **ITA No.328/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (24Q-Q-2)
&
2.आयकर अपील सं./ **ITA No.329/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (24Q-Q-3)
&
3.आयकर अपील सं./ **ITA No.330/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (24Q-Q-4)
&
4.आयकर अपील सं./ **ITA No.331/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (26Q-Q-2)
&
5.आयकर अपील सं./ **ITA No.332/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (26Q-Q-3)
&
6.आयकर अपील सं./ **ITA No.333/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2013-14 (26Q-Q-4)
&
7.आयकर अपील सं./ **ITA No.334/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (24Q-Q-1)
&
8.आयकर अपील सं./ **ITA No.335/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (24Q-Q-2)
&

9.आयकर अपील सं./ **ITA No.336/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (24Q-Q-3)
&
10.आयकर अपील सं./ **ITA No.337/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (24Q-Q-4)
&
11.आयकर अपील सं./ **ITA No.338/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (26Q-Q-1)
&
12.आयकर अपील सं./ **ITA No.339/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (26Q-Q-2)
&
13.आयकर अपील सं./ **ITA No.340/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (26Q-Q-3)
&
14.आयकर अपील सं./ **ITA No.341/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2014-15 (26Q-Q-4)
&
15.आयकर अपील सं./ **ITA No.342/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2015-16 (24Q-Q-1)
&
16.आयकर अपील सं./ **ITA No.343/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2015-16 (24Q-Q-2)
&
17.आयकर अपील सं./ **ITA No.344/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2015-16 (24Q-Q-3)
&
18.आयकर अपील सं./ **ITA No.345/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2015-16 (24Q-Q-4)
&
19.आयकर अपील सं./ **ITA No.346/Chny/2023**
(**निर्धारण वर्ष /** Assessment Year: 2015-16 (26Q-Q-1)
&
20.आयकर अपील सं./ **ITA No.347/Chny/2023**

(**निर्धारण वर्ष /** Assessment Year: 2015-16 (26Q-Q-2)

&

21.आयकर अपील सं./ **ITA No.348/Chny/2023**

(**निर्धारण वर्ष /** Assessment Year: 2015-16 (26Q-Q-3)

&

22.आयकर अपील सं./ **ITA No.349/Chny/2023**

(**निर्धारण वर्ष /** Assessment Year: 2015-16 (26Q-Q-4)

&

23.आयकर अपील सं./ **ITA No.350/Chny/2023**

(**निर्धारण वर्ष /** Assessment Year: 2016-17 (24Q-Q-1)

&

24.आयकर अपील सं./ **ITA No.351/Chny/2023**

(**निर्धारण वर्ष /** Assessment Year: 2016-17 (26Q-Q-1)

M/s. CIGFIL Ltd. 37, Armenian Street, Chennai-600 001.	**बनाम** / Vs.	**ITO** TDS Ward-1(1) Chennai.
स्थायी लेखा सं./जीआइ आर सं./**PAN/TAN AAACC-3120-C / CHEC-05921-G**		
(□ पीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri Shrenik Chordia (CA)-Ld. AR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Shri D.Hema Bhupal (JCIT) –Ld.DR
सुनवाई की तारीख**/Date of Hearing**	:	27-04-2023
घोषणा की तारीख **/Date of Pronouncement**	:	27-04-2023

आदेश / O R D E R

PER BENCH:

1. All these appeals have been filed by the assessee for various quarters of Assessment Years (AY) 2013-14, 2014-15 & 2015-16. The same arises out of separate orders passed by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] confirming levy of fees u/s. 234E of the Act by TDS, CPC for late filing of Quarterly TDS returns in Form 24Q / 26Q. It is admitted position that facts as well as issues are identical in all the appeals and adjudication in any one appeal would equally apply to all the other

appeals. For the purpose of adjudication, facts from ITA No.328/Chny/2023 have been enumerated in the order. The grounds raised by the assessee therein read as under: -

> "1. The Order of the Learned Commissioner of Income Tax (Appeals) is contrary to the law, facts and circumstances of the case.
> 2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the levy of late filing fees of Rs.1,86,800/- u/s 234E of the Income Tax Act pertaining to Form 24Q filed by the appellant for Quarter 2 of the FY 2012-13.
> 3. The Learned Commissioner of Income Tax (Appeals) had erred in holding that the appellant had contested the levy u/s 234E itself and had failed to appreciate that the appellant had contested only the period from which such levy was applicable.
> 4. The Commissioner of Income Tax (Appeals) had erred in relying upon the decisions by various High courts upholding the constitutional validity of Section 234E of the Act which is not applicable to the appellant's case in hand challenging the levy u/s 234E for the period prior to 01.06.2015.
> 5. The Commissioner of Income Tax (Appeals) had failed to consider the latest decisions in favour of the assessee on the levy of fees u/s 234E for the period prior to 01.06.2015 submitted by the appellant, being decisions of the very same High Courts succeeding that relied upon by him/her.
> 6. The Commissioner of Income Tax (Appeals) had failed to follow the decision of the Apex Court in the case of Vegetable Products Ltd. reported in [1973] 88 ITR 192 (SC) wherein it had been observed that *"If court finds that language to be ambiguous or capable of more meanings than one, then the court has to adopt that interpretation which favours the assessee, more particularly so because the provision relates to imposition of penalty."*

2. The learned AR has tabulated the position of fees levied for various quarters along with date of filing of TDS returns as intimation issued by TDS, CPC as under: -

No.	Quarter & Form	Amount of Fee levied u/s 234E	Date of Filing of Returns	Date of Intimation order
1.	2012-13 (Q2) (24Q)	1,86,800	7-May-2015	14-May-2015
2.	2012-13 (Q3) (24Q)	1,68,400	7-May-2015	15-May-2015
3.	2012-13 (Q4) (24Q)	146,800	19-May-2015	2-Jun-2015
4.	2012-13 (Q2) (26Q)	1,86,800	7-May-2015	15-May-2015
5.	2012-13 (Q3) (26Q)	1,68,400	7-May-2015	15-May-2015
6.	2012-13 (Q4) (26Q)	1,44,400	7-May-2015	15-May-2015
7.	2012-13 (Q1) (24Q)	1,20,000	7-May-2015	13-Mar-2015
8.	2012-13 (Q2) (24Q)	1,01,600	7-May-2015	13-Mar-2015
9.	2012-13 (Q3) (24Q)	83,200	7-May-2015	13-Mar-2015
10.	2012-13 (Q4) (24Q)	59,200	7-May-2015	13-Mar-2015
11.	2012-13 (Q1) (26Q)	1,19,400	4-Mar-2015	16-Mar-2015
12.	2012-13 (Q2) (26Q)	1,01,000	4-Mar-2015	16-Mar-2015

13.	2012-13 (Q3) (26Q)	82,600	4-Mar-2015	16-Mar-2015
14.	2012-13 (Q4) (26Q)	58,600	4-Mar-2015	16-Mar-2015
15.	2012-13 (Q1) (24Q)	1,22,400	18-Mar-2016	22-Mar-2016
16.	2012-13 (Q2) (24Q)	1,04,000	18-Mar-2016	22-Mar-2016
17.	2012-13 (Q3) (24Q)	85,600	18-Mar-2016	22-Mar-2016
18.	2012-13 (Q4) (24Q)	61,600	18-Mar-2016	22-Mar-2016
19.	2012-13 (Q1) (26Q)	1,25,200	1-Apr-2016	6-Apr-2016
20.	2012-13 (Q2) (26Q)	1,04,600	21-Mar-2016	24-Mar-2016
21.	2012-13 (Q3) (26Q)	88,400	1-Apr-2016	6-Apr-2016
22.	2012-13 (Q4) (26Q)	64,400	1-Apr-2016	6-Apr-2016
23.	2012-13 (Q1) (24Q)	77,000	3-Aug-2016	10-Aug-2016
24.	2012-13 (Q1) (26Q)	90,200	8-Oct-2016	12-Oct-2016

3. The AR relied on the favorable decision of Hon'ble High Court of Karnataka in the case of **Fatehraj Singhvi Vs. Union of India (73 Taxmann.com 252)** wherein it was that no such fees could have been levied for any period failing prior to 01.06.2015. The Ld. AR also averred that Ld. CIT(A) had condoned the delay and adjudicated the issue on merits.

4. The DR, on the other hand, relied on the decision of Hon'ble Gujarat High Court in the case of **Rajesh Kourani Vs. Union of India (2017) 83 Taxmann.com 137(Gujarat);** the decision of Hon'ble Madras High Court in the case of **Qatalys Software Technologies P. Ltd. vs. Union of India (2020) 115 Taxmann.com 345;** the decision of Jabalpur Tribunal in **Madhyanchal Gramin Bank Vs. ITO (2023) 147 Taxmann.com 443 (Jabalpur).** The Ld. Sr. DR submitted that TDS returns in ITA Nos.330/Chny/2023 as well as in ITA Nos.342/Chny/2023 to 351/Chny/2023 has been processed after 01.06.2015 whereas the returns in all the other 13 appeals have been processed before 01.06.2015. The aforesaid tabulation has been placed on record. The Ld. DR also submitted that delay has not been

condoned in the impugned order and therefore, appeal is liable to be dismissed on this score also.

Having heard rival submissions, the appeals are disposed-off as under.

5. The impugned fees as tabulated above has been levied by TDS, CPC while processing the quarterly TDS returns filed by the assessee in Form No. 24Q and 26Q. The assessee preferred further appeal on 21.06.2022 with a request for condonation of delay of 3507 days. In support of condonation of delay, the assessee filed affidavit of Finance Manager. In substantive paras-4 to 7 of the affidavit, it was submitted as under: -

> 4. The deponent prefers to file this appeal beyond due date for the reason that when the Department started levying late fee under section 234E of the Act, there was an ambiguity and no clear directions regarding levy of late filing fee under section 234E of the Act for belated filing of TDS returns. However, in the year 2018 various High Courts and Tribunals have taken a clear stand and held that amendment *made* under section 200A of the Act with effect from 01.06.2015 is held to be prospective in nature and hence no late fee can be charged u/s.234E of the Act, while processing TDS returns filed prior to 01.06.2015. Based on subsequent judgments of various Courts and Tribunals, the deponent feels that appeal can be filed against intimation issued by the Assessing Officer levying late fee u/s.234E of the Act. Hence, the deponent prefers this appeal.
> 5. The Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. MST Katiji and Others (1987) 167 ITR 471 (SC) while laying down principles for considering matters of condonation of delay in filing appeals have stated that substantial justice should prevail over technical considerations.
> 6. It is most humbly and respectfully submitted that the delay in filing appeal was not willful and due to circumstances beyond the control of the deponent.
> 7. The deponent most humbly and respectfully prays before your authority to kindly condone the delay and admit the appeal.

The assessee also relied on various judicial pronouncements supporting condonation of delay. Considering assessee's submissions, Ld. CIT(A) held as under: -

> 4.1.1 The appeal is filed beyond prescribed time, with almost 7 years delay and liable to be rejected on that basis itself. However, it is being decided on merits."

No other findings have been rendered in the impugned order on delay. Upon perusal of aforesaid observation, it could be concluded that though Ld. CIT(A) was not convinced with the delay but still admitted the appeal and proceeded further to adjudicate the matter on merits. This being so, we also proceed to adjudicate the appeal on merits since the findings have been rendered on merits in the impugned order.

6. In the impugned order, Ld. CIT(A) considering the ratio of various judicial decisions upheld the levy of fees against which the assessee is in further appeal before us.

7. We find that the issue, on merits, have elaborately been adjudicate by co-ordinate bench of this Tribunal in its decision titled as **Evergreen Harvest Agro Products P. Ltd. V/s ITO (ITA Nos.185 to 194/Chny/2022 order dated 12.05.2022)** as under: -

> 5.1 Upon careful consideration, we find that the provisions of Section 234E, as inserted by Finance Act 2012 w.e.f. 01/07/2012, envisages levy of fees @Rs.200/- for every day of default on the part of the assessee to deliver the statement of TDS within the time prescribed u/s 200(3) or Section 206C(3). Section 200A deal with processing of statements of tax deducted at source. A clause (c) has been inserted into this Section by Finance Act, 2015 with effect from 01/06/2015 which provide that the fees, if any, shall be computed in accordance with the provisions of Section 234E.
>
> 5.2 The case of the assessee is that since the amendment to Section 200A by way of insertion of clause (c) is only with effect from 01/06/2015, no fees would be payable by the assessee for any period prior to 01/06/2015 as held by Hon'ble Karnataka High Court in **Fatehraj Singhvi V/s Union of India (73 Taxmann.com 252 26/08/2016)** which has subsequently been followed by same court while adjudicating Writ Petition No. 618/2015 filed by **Shree Ayappa Educational Charitable Trust**. The relevant observations of Hon'ble Karnataka, for ease of reference, could be extracted in the following manner: -
>
> ***6.*** *We have heard learned Senior Counsel Mr.Kumar and Mr.A.Shankar, appearing for the appellants and Mr.K.V.Aravind, learned counsel appearing for Income Tax Department.*
>
> ***7.*** *We may at the outset record that, learned counsel appearing for both sides have made submissions which shall be dealt with appropriately at the later stage. But, in order to appreciate the controversies including that of the background, certain aspects deserve to be taken note of which are as under:*

8. *As per Section 200(3) of the Act read with Rule 31A of the Income Tax Rules, 1962 (hereinafter referred to as 'Rules') a tax deductor is required to file quarterly statement of such taxes deducted at source by him as TDS and for the period in question, the relevant dates for filing of such statement is as follows:*

(i) 30th June - 15th July of the financial year;

(ii) 30th September - 15th October of the financial year;

(iii) 31st December - 15th January of the financial year; and

(iv) 31st March - 15th May of the following financial year.

9. *It may be recorded that Section 200(3) requiring to file formal TDS statement within the aforesaid each quarter was inserted on 1.4.2005 and at the relevant point of time, Section 272A(2)(k) provided for the penalty of Rs.100/- per day for each day of default in filing TDS statement and such provision also came to be inserted with effect from 1.4.2005. On 1.4.2010, Section 200A was inserted providing for the processing of the TDS statement and the consequent issuance of the intimation to the deductor, the same determined as payable by it or refundable by it. But, the relevant aspect is that, in initial provisions of Section 200A, there was no reference for fee payable under Section 234E.*

10. *On 1.7.2012, Section 234E providing for levying of fee of Rs.200/- per day for each day of default in filing TDS statement was inserted. Section 234E for ready reference is reproduced and the same reads as under:*

"Fee for default in furnishing statements.

234E. *(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.*

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

11. *Similarly, Section 271H was inserted with effect from 1.7.2012 providing for imposition of penalty for default in filing TDS statement and also for furnishing of incorrect information in such TDS statement. The proviso was inserted in Section 272A providing for no penalty under the said section will be imposed after 1.7.2012 for failure to file TDS statement on time possibly because a separate Section 271H was inserted in the Act. Section 271H will be relevant for our purpose and same for ready reference is reproduced and it reads as under:*

"Penalty for failure to furnish statements, etc.

271H. *(1) Without prejudice to the provisions of the Act, [the Assessing Officer may direct that a person shall pay by way of] penalty, if, he—*

(a) fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C; or

(b) furnishes incorrect information in the statement which is required to be delivered or caused to be delivered under sub section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in sub section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

12. *On 1.6.2015, clauses (c) to (f) came to be substituted under Section 200A providing that the fee under Section 234E can be computed at the time of processing of the return and the intimation could be issued specifying the same payable by the deductor as fee under Section 234E of the Act. Section 200A would also be relevant in the present matter. Hence, the same for ready reference is reproduced as under:*

"Processing of statements of tax deducted at source*.*

200A. *(1) Where a statement of tax deduction at source [69][or a correction statement] has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section

234E;

(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:]

***Provided** that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

***13.** When the returns for TDS filed by the respective appellant-petitioners were processed in purported exercise of the power under Section 200A, the amount of fee under Section 234E is computed and determined. The demand is made and the intimation given under Section 200A includes the computation and the determination of the fee payable by the appellant-petitioners.*

***14.** We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made.*

***15.** Whereas, the learned counsel appearing for the respondent-Department made two fold submissions;*

16. *One was that, by virtue of Section 234E, the liability to pay fee had already accrued since there was failure to submit return either under Section 200(3) of the Act or under Section 206C (3) of the Act. Section 234E can be said as a charging Section generating the liability to pay the fee therefore, irrespective of a fact or the aspect that sub-sections (1c), (1d), 1(e) & (1f) were inserted by way of substitution in Section 200A, when the fee was payable the aforesaid insertion of the aforesaid clause and Section 200A (1) (c), (d), (e) and (f) would not result into nullifying the liability to pay fee under Section 234E of the Act. Hence, in his submission, it cannot be said that the demand or the intimation by way of computation of the fee under Section 234E is invalid or unwarranted or is without jurisdiction.*

17. *The examination of the aforesaid contentions show that, Section 234E has come into force on 1.7.2012. Therefore, one may at the first blush say that, since 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, in our view, Section 234E cannot be read in isolation and is required to be read with the mechanism and the mode provided for its enforcement. As observed by us hereinabove, when Section 234E was inserted in the Act simultaneously, Section 271H was also inserted in the Act providing for the penalty for failure of furnishing of statements etc. Therefore, if there was failure to submit the statement for TDS as per Section 234E, the fee payable is provided but the mechanism provided was that if there was failure to furnish statements within the prescribed date, the penalty under Section 271H (1) and (2) could be imposed. However, under sub-section (3) of Section 271H, the exception is provided that no penalty shall be levied for the failure referred to under clause (a) of sub-section (1) if the person proves that after paying TDS with the fee and interest the amount is credited and he had delivered or caused to deliver the statement within one year from the time prescribed for submission of the said statement. To put it in other words, for failure to submit the statements, the penalty provided under Section 271(1)(a) cannot be imposed if the deductor complies with the requirement of sub-section (3) of Section 271H. Hence, it can be said that the fee provided under Section 234E would take out from the rigors of penalty under Section 271H but of course subject to the outer limit of one year as prescribed under sub-section (3) of Section 271H. It can also be said that when the Parliament intended to insert the provisions of Section 234E providing for fee simultaneously the utility of such fee was for conferring the privilege to the defaulter-deductor to come out from the rigors of penal provision of Section 271H. Be it recorded that, prior to Section 271H of the Act inserted in the statute book, the enforceability of requirement to file return under Section 200(3) and Section 206C(3) was by virtue of Section 272A(2)(k) of the Act which provided for the penalty of Rs.100/- per day for each day of default in filing TDS statements. But, when Section 234E was inserted with effect from 1.7.2012 simultaneously, a second proviso was added under Section 272A(2) with effect from 1.7.2012 as under:*

"Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.

*272A. (1)** ** ***

(2) If any person fails—

(a) to comply with a notice issued under sub-section (6) of section 94; or

(b) to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176; or

(c) to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 or section 206C or section 285B; or

(d) to allow inspection of any register referred to in section 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken; or

(e) to furnish the return of income which he is required to furnish under sub-section (4A) or sub-section (4C) of section 139 or to furnish it within the time allowed and in the manner required under those sub-sections; or

(f) to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A; or

(g) to furnish a certificate as required by section 203 or section 206C; or

(h) to deduct and pay tax as required by sub-section (2) of section 226;

(i) to furnish a statement as required by sub-section (2C) of section 192;

(j) to deliver or cause to be delivered in due time a copy of the declaration referred to in sub-section (1A) of section 206C;

(k) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C;

(l) to deliver or cause to be delivered the statements within the time specified in sub-section (1) of section 206A;

[(m) to deliver or cause to be delivered a statement within the time as may be prescribed under sub-section (2A) of section 200 or sub-section (3A) of section 206C,]

he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues:

***Provided** that the amount of penalty for failures in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns under sections 206 and 206C and [71][statements under sub-section (2A) or sub section (3) of section 200 or the proviso to sub-section (3) or under sub-section (3A) of section 206C] shall not exceed the amount of tax deductible or collectible, as the case may be:*

Provided further that no penalty shall be levied under this section for the failure referred to in clause (k), if such failure relates to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.

** ** **"

18. *The aforesaid shows that in the clause (k) if the said failure relates to a statement referred to in sub-section (3) of Section 200 or the sub-section (3) of Section 206C, no penalty shall be imposed for TDS after 01.07.2012.*

19. *Hence, it can be said that, the mechanism provided for enforceability of Section 200(3) or 206C (3) for filing of the statement by making it penal under Section 272A (2) (k) is done away in view of the insertion of Section 271H providing for penal provision for such failure to submit return. When the Parliament has simultaneously brought about Section 234E, Section 271H and the aforesaid proviso to Section 272A(2), it can be said that, the fee provided under Section 234E is contemplated to give a privilege to the defaulter to come out from the rigors of penalty provision under Section 271H (1) (a) if he pays the fee within one year and complies with the requirement of sub-section (3) of Section 271H.*

20. *In view of the aforesaid observations and discussion, two aspects may transpire one, for Section 234E providing for fee and given privilege to the defaulter if he pays the fee and hence, when a privilege is given for a particular purpose which in the present case is to come out from rigors of penal provision of Section 271H(1)(a), it cannot be said that the provisions of fee since creates a counter benefit or reciprocal benefit in favour of the defaulter in the rigors of the penal provision, the provisions of Section 234E would meet with the test of quid pro quo.*

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.*

23. *In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.*

24. *If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.*

25. *As such, as recorded earlier, it is on account of the intimation received under Section 200A for making computation and demand of fees under Section 234E, the same has necessitated the appellant to challenge the constitutional validity of Section 234E. When the intimation of the demand notices under Section 200A is held to be without authority of law so far as it relates to computation and demand of fee under Section 234E, we find that the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise because there would not be any cause on the part of the petitioners to continue to maintain the challenge to constitutional validity under Section 234E of the Act. At this stage, we may also record that the learned counsels appearing for the appellant had also declared that if the impugned notices under Section 200A are set aside, so far as it relates to computation and intimation for payment of fee*

under Section 234E, the appellant-petitioners would not press the challenge to the constitutional validity of Section 234E of the Act. But, they submitted that the question of constitutional validity of Section 234E may be kept open to be considered by the Division Bench and the Judgment of the learned Single Judge may not conclude the constitutional validity of Section 234E of the Act.

26. *Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.*

27. *In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.*

28. *The appeals are partly allowed to the aforesaid extent.*

5.3 On the other hand, the case of the revenue would derive strength from the contrary decision of Hon'ble Gujarat High Court rendered in **Rajesh Kourani V/s Union of India (297 CTR 502 20/06/2017)** wherein the Hon'ble court has declined to concur with the aforesaid adjudication of Hon'ble Karnataka High Court, by observing as under: -

2. *Brief facts are as under.*

3. *The petitioner is a proprietor of one M/s SaiBaba Textiles which is engaged in the manufacture and trading of ladies garments. In course of the business, the petitioner would make payments to individuals and agencies, many of which would require deducting tax at source. The provisions under the Act would further require the petitioner to file periodic statements of such tax deducted at source and depositing the tax in the Government within the time prescribed. With effect from 01.07.2012, section 234E was introduced in the Act for levying fee for default in furnishing the statement of tax deducted or collected at source. As per rule 31A of the Rules, the person responsible for deduction of tax in terms of sub-section (3) of section 200 would have to file quarterly statements in prescribed form. Sub-rule (2) of rule 31A prescribed dates by which such statements would have to be filed.*

4. *Section 200A of the Act pertains to processing of statements of tax deducted at source. This provision provides for processing the statement filed by person deducting the tax. Prior to 01.06.2015, this provision did not contain any reference to the adjustment of fee to be computed in accordance with the provisions of section 234E of the Act. This provision was made only with effect from 01.06.2015.*

5. *In the petition, the petitioner has raised following threefold grievances:*

I. *That section 234E of the Act is ultra-vires and unconstitutional.*

II. *Rule 31A of the Rules insofar as it prescribes longer period for the Government to file the statements as compared to the other assessees is discriminatory and arbitrary and therefore unconstitutional.*

III. *Prior to 01.06.2015, section 200A did not authorize the Assessing Officer to make adjustment of the fee to be levied under section 234E of the Act. This provision introduced with effect from 01.03.2016 is not retrospective and therefore, for the period between 01.07.2002 i.e. when section 234E was introduced in the Act and 01.06.2015 when proper mechanism was provided under section 200A of the Act for collection of fee, the department could not have charged such fee.*

6. *Appearing for the petitioner, learned advocate Shri Parth Contractor at the outset, stated that in view of the judgment of the Bombay High Court in case of Rashmikant Kundalia v. Union of India [2015] 373 ITR 268/229 Taxman 596/54 taxmann.com 200, he has instructions not to press the challenge to constitutionality of section 234E of the Act. He however made detailed submissions with respect to the other two grievances of the petitioner. Regarding rule 31A of the Rules, he pointed out that the legislature has prescribed different time limits for filing statements for the Government and the rest of the assessees. The special concession to the Government agencies was wholly unnecessary and not based on any rational. The same difficulties and complexities which are faced by Government agencies would also be faced by the individual assessees.*

7. *With respect to the amendment in sub-section (1) of section 200A, counsel submitted that prior to such amendment, there was no mechanism provided under the Act for collection of fee under section 234E of the Act. The Assessing Officer therefore could not have adjusted such fee in terms of section 200A of the Act. Counsel drew our attention to an intimation sent by the Assessing Officer, purported to be under section 200A of the Act, in which, he had adjusted a sum of Rs.33,123/- by way of late filing fee under section 234E of the Act. Counsel relied on a decision of Pune Bench of ITAT in case of Gajanan Constructions v. Dy, CIT [2016] 73 taxmann.com 380/161 ITD 313 (Pune - Trib.), in which, the Tribunal held that prior to 01.06.2015, the Assessing Officer was not empowered to charge fee under section 234E of the Act. Counsel also relied on a decision of Division Bench of Karnataka High Court in case of Fatheraj Singhvi v. Union of India [2016] 73 taxmann.com 252, in which, the Court has taken a view that the amendment in section 200A with effect from 01.06.2015 cannot have retrospective effect.*

8. *On the other hand learned counsel Shri Manish Bhatt for the department opposed the petition contending that two different time limits for filing statements under rule 31A are for Government and nonGovernment agencies. Looking to the multilayered system of operation of the Government agencies and overall workload, the legislature thought it fit to grant 15 days additional time to the Government agencies to file the statements. This is therefore not a case of discrimination, but a case of reasonable classification.*

9. *With respect to the amendment in section 200A, counsel submitted that the charging provision is section 200E of the Act. Section 200A merely provides a mechanism. Such a provision cannot govern the charging provision. Even in absence of amendment in section 200A, the Assessing Officer was always authorized to levy fee in terms of section 200E of the Act. At best, the amendment in the said provision should be seen as clarificatory or providing a mechanism which till then was missing. Counsel referred to the decision of Rajasthan High Court in case of Dundlod Shikshan Sansthan v. Union of India [2015] 63 taxmann.com 243/235 Taxman 446 (Raj.), where, in the context of challenge to the vires to the section 234E of the Act, incidentally this issue also came up for consideration.*

10. *In order to appreciate the rival contentions, we may take a closer look at the statutory provisions applicable. Section 200 of the Act pertains to duty of the person deducting tax and imposes a duty on a person deducting tax in accordance with the foregoing provisions of chapter-XVII to pay such sum to the credit of the Central Government within the time prescribed. Sub-section (3) of section 200 requires such a person to prepare such statements for the prescribed periods and to file the same within the prescribed time. Section 200C of the Act makes similar provision for the person responsible for the collection of tax at source to deposit the same with the Government revenue and to file a statement within the prescribed time.*

11. *Section 200A of the Act pertains to processing of statements of tax deducted at source. We would notice the provisions of this section prior to 01.06.2015 and the changes made therein by virtue of Finance Act, 2015, with effect from 01.06.2015. Further, we would take note of provisions of section 234E of the Act. For the time being, we may notice that section 200A provides for a mechanism for processing a statement filed under section 200 of the Act and enables the Assessing Officer to make some adjustments and to intimate the final outcome to the assessee.*

12. *Section 234E which pertains to fee for default in furnishing the statements was introduced for the first time by the Finance Act, 2012, with effect from 01.07.2015. Section 234E reads as under:*

"Fee for default in furnishing statements.

234E*.(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.*

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section(3) of section 200 or the proviso to sub-section (3) of section 206C which

is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

13. *With effect from 01.07.2012, the legislature also introduced section 271H of the Act providing penalty for failure to furnish statements required to be filed under sub-section (3) of section 200 or under proviso to sub-section (3) of section 206C of the Act. As per sub-section (2) of section 271H in case of default to file the statements, the assessee may be liable to penalty of not less than rupees ten thousand but not more than rupees one lakh. Under sub-section (3) of section 271H however, such penalty would be avoided if the assessee proves that he had paid the tax deducted or collected alongwith interest and he had filed the necessary statement within one year from the time prescribed for filing such statements. We may also record that clause (k) of sub-section (2) of section 272A provides for penalty for failure to deliver the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C at a rate of rupees one hundred for every date during which the failure continues. However, with effect from 01.07.2012, a proviso was added limiting the effect of this provision upto 01.07.2012. In other words, after 01.07.2012, the penalty provision of section 271H would apply in such cases of defaults.*

14. *Section 200A(1) of the Act prior to 01.06.2015 provided as under:*

Section 200A(1)

*"**Processing of statements of tax deducted at source.***

200A*. (1) Where a statement of tax deduction at source [or a correction statement] has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor:

(f) the amount of refund due to the deductor in pursuance of the determination

under clause (d) shall be granted to the deductor:]

***Provided** that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

With effect from 01.06.2015, sub-section (1) of section 200A was amended. In the amended form, the same provision reads as under:

Section 200A(1)

"Processing of statements of tax deducted at source.

***200A**. (1) Where a statement of tax deduction at source [or a correction statement] has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—*

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, apparent from any information in the statement;

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

*(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 **or section 234E** and any amount paid otherwise by way of tax or interest or fee;*

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination

under clause (d) shall be granted to the deductor:]

***Provided** that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.*

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

***15.** In view of such statutory provisions, we may consider the petitioner's two challenges. Coming to the question of discriminatory nature of rule 31A of the Rules, it can be seen that sub-rule (1) of rule 31A of the Rules provides for filing of the statements in prescribed forms as required under sub-section (3) of section 200. Sub-rule (2) of rule 31A lays down the time limit for filing such quarterly statements and provides as under:*

"(2) Statements referred to in sub-rule (1) for the quarter of the financial year ending with the date specified in column (2) of the Table below shall be furnished by-

(i) the due date specified in the corresponding entry in column (3) of the said Table, if the deductor is an office of Government; and

(ii) the due date specified in the corresponding entry in column (4) of the said Table, if the deductor is a person other than the person referred to in clause (i)

TABLE

Sl. No.	*Date of ending of quarter of financial year*	*Due date*	*Due date*
(1)	*(2)*	*(3)*	*(4)*
1	*30th June*	*31st July of the financial year*	*15th July of the financial year*
2	*30th September*	*31st October of the financial year*	*15th October of the financial year*
3	*31st December*	*31st January of the financial year*	*15th January of the financial year*
4	*31st March*	*15th May of the financial year immediately following the financial year in which the*	*15th May of the financial year immediately following the financial year in which the*

		deduction is made.	*deduction is made."*

This rule thus, while laying down the last date by which such statements should be filed, draws two categories; in case of deductor is an office of government and in case of a deductor is a person other than the office of the government. Consistently, the office of the government is granted 15 days extra time as compared to the other deductors. For example, the statement for the date of the quarter ending on 30th June, an ordinary deductor would have to file a statement latest by 15th July of the same year, whereas for the Government office, the last date for filing such statement would be 31st July of the said year. This 15 days extra time is a consistent feature in all four quarters. The short question is, did the legislature discriminate in doing so? It is well settled that Article 14 does not prohibit reasonable classification but frowns upon class legislation. In the affidavit in reply filed, the respondents have pointed out that multiple agencies are involved in every transaction in the Government offices and the same therefore cannot be compared with the private individuals or business houses. We do not found that the extra time of 15 days for the Government to file a return of deduction of tax at source is in any manner either unreasonable or discriminatory. If the legislature found it appropriate to grant slightly longer period to the government agencies looking to the complex nature of transactions involved, the volume and turnover of such transactions and filtering necessary statements required at many stages, in our opinion, the same was perfectly legitimate. Looking to the differences between the Government agencies and private assessees in the context of providing the last date for filing the statements, do not form a homogeneous class which cannot be further bifurcated.

16. *We now come to the petitioner's central challenge viz. of non permissibility to levy fee under section 234E of the Act till section 200A of the Act was amended with effect from 01.06.2015. We have noticed the relevant statutory provisions. The picture that emerges is that prior to 01.07.2012, the Act contained a single provision in section 272A providing for penalty in case of default in filing the statements in terms of section 200 or proviso to section 206C. Such penalty was prescribed at the rate of Rs.100 for every day during which the failure continued. With effect from 01.06.2012, three major changes were introduced in the Act. Section 234E as introduced for the first time to provide for charging of fee for late filing of the statements. Such fee would be levied at the rate of Rs.200/- for every day of failure subject to the maximum amount of tax deductible or collectible as the case may be. Section 271H was also introduced for the first time for levying penalty for failure to furnish the statements. Such penalty would be in the range of Rs.10,000/- and Rs.1 lakh. No penalty would be imposed if the tax is deposited with fee and interest and the statement is filed within one year of the due date. With addition to these two provisions prescribing fee and penalty respectively, clause (k) of sub-section (2) of section 272A became redundant and by adding a proviso to the said section, this effect was therefore limited upto 01.07.2012.*

17. *In essence, section 234E thus prescribed for the first time charging of a fee for every day of default in filing of statement under sub-section (3) of section 200 or any proviso to sub-section (3) of section 206C. This provision was apparently added for making the compliance of deduction and collection of tax at source, depositing it with Government revenue and filing of the statements more stringent.*

18. *In this context, we may notice that section 200A which pertains to processing of statements of tax deducted at source provides for the procedure once a statement of deduction of tax at source is filed by the person responsible to do so and authorizes the Assessing Officer to make certain adjustments which are prima-facie or arithmetical in nature. The officer would then send an intimation of a statement to the assessee. Prior to 01.06.2015, this provision did not include any reference to the fee payable under section 234E of the Act. By recasting sub-section (1), the new clause-c permits the authority to compute the fee, if any, payable by the assessee under section 234E of the Act and by virtue of clause-d, adjust the said sum against the amount paid under the various provisions of the Act.*

19. *In plain terms, section 200A of the Act is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments, which are, as noted earlier, arithmetical or prima-facie in nature. With effect from 01.06.2015, this provision specifically provides for computing the fee payable under section 234E of the Act. On the other hand, section 234E is a charging provision creating a charge for levying fee for certain defaults in filing the statements. Under no circumstances a machinery provision can override or overrule a charging provision. We are unable to see that section 200A of the Act creates any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When section 234E has already created a charge for levying fee that would thereafter not been necessary to have yet another provision creating the same charge. Viewing section 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision in our understanding is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under section 234E for late filing of the statements.*

20. *Even in absence of section 200A of the Act with introduction of section 234E, it was always open for the Revenue to demand and collect the fee for late filing of the statements. Section 200A would merely regulate the manner in which the computation of such fee would be made and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being found for section 200A for computation of fee, the fee prescribed under section 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, the recasted clause (c) of sub-section (1) of section 200A would be in nature of clarificatory amendment. Even in absence of such provision, as noted, it was always open for the Revenue to charge the fee in terms of section 234E of the Act. By amendment, this adjustment was brought within the fold of section 200A of the Act. This would have one direct effect. An order passed under section 200A of the Act is rectifiable under section 154 of the Act and is also appealable under section 246A. In absence of the power of authority to make such adjustment under section 200A of the Act, any calculation of the fee would not partake the character of the intimation under said provision and it could be argued that such an order would not be open to any rectification or appeal. Upon introduction of the recasted clause (c), this situation also would be obviated. Even prior to 01.06.2015, it was always open for the Revenue to calculate fee in terms of section 234E of the Act. The Karnataka High Court in case of Fatheraj Singhvi (supra) held that section 200A was not merely a*

regulatory provision, but was conferring substantive power on the authority. The Court was also of the opinion that section 234E of the Act was in the nature of privilege to the defaulter if he fails to pay fees then he would be rid of rigor of the penal provision of section 271H of the Act. With both these propositions, with respect, we are unable to concur. Section 200A is not a source of substantive power. Substantive power to levy fee can be traced to section 234E of the Act. Further the fee under section 234E of the Act is not in lieu of the penalty of section 271H of the Act. Both are independent levies. Section 271H only provides that such penalty would not be levy if certain conditions are fulfilled. One of the conditions is that the tax with fee and interest is paid. The additional condition being that the statement is filed latest within one year from the due date.

21. *Counsel for the petitioner however, referred to the decision of Supreme Court in case of CIT v. B.C. Srinivasa Setty [1981] 128 ITR 294/5 Taxman 1 (SC), to contend that when a machinery provision is not provided, the levy itself would fail. The decision of Supreme Court in case of B C Srinivasa Setty (supra) was rendered in entirely different background. Issue involved was of charging capital gain on transfer of a capital asset. In case on hand, the asset was in the nature of goodwill. The Supreme Court referring to various provisions concerning charging and computing capital gain observed that none of these provisions suggest that they include an asset in the acquisition of which no cost can be conceived. In such a case, the asset is sold and the consideration is brought to tax, what is charged is a capital value of the asset and not any profit or gain. This decision therefore would not apply in the present case.*

22. *In the result, petition fails and is dismissed.*

5.4 We find that a view favorable to the assessee has been taken by Hon'ble High Court of Kerala in recent decision titled as **United Metals V/s ITO (137 Taxmann.com 115)** following its earlier decision in **Sarala Memorial Hospital V/s UOI (WP (c) No.37775 of 2018 dated 18.12.2018)** which is stated to have attained finality. Similar view favorable to assessee has been taken by Chennai Tribunal in its recent decision titled as **M/s DRG Rexine Inc. V/s ACIT (ITA No.351/Chny/2021; dated 24.02.2022)** following the case law of **Fatehraj Singhvi V/s UOI (supra).** Admittedly, there is no decision by Hon'ble High Court of Madras. In such a case, an analogy could be drawn from the decision of Hon'ble Supreme Court in **CIT V/s Vegetable products Ltd. (1972; 88 ITR 192)** for the conclusion that in case of two reasonable constructions of taxing statutes, the one that favors the assessee must be adopted. Respectfully following the same, we would hold that a view favorable to the assessee was to be adopted and therefore, the levy of fees u/s 234E for any period prior to 01/06/2015 would not be sustainable in the eyes of law. We order so. In the result, the fees levied by TDS officer u/s 234E for Financial Years 2013-14 & 2014-15 could not be sustained. By deleting the same, we allow all the appeals of the assessee. The concerned authorities are directed to re-compute the demand payable by the assessee.

6. All the appeals stand allowed in terms of our above order.

In the aforesaid decision, the bench following the contrary decisions of Hon'ble Karnataka High Court as well as the decision of Hon'ble

Gujarat High Court applied the analogy of the decision of Hon'ble Supreme Court in **CIT V/s Vegetable products Ltd. (1972; 88 ITR 192)** to take a view favorable to the assessee. We are inclined to take the same view and accordingly, hold that the levy of fees u/s 234E for processing of return for prior to 01/06/2015 would not be sustainable in the eyes of law. We have perused the decision of Hon'ble High Court of Madras in **Qatalys Software technologies (P) Ltd. V/s Union of India (2020 115; Taxmann.com 345)**. We find that this decision has upheld the constitutional validity of the provisions of Sec.234E and do not deal with the issue under consideration. Therefore, there is no quarrel as to the applicability of this decision of Hon'ble High Court of Madras.

8. At the same time, Ld. Sr. DR has pointed out that few of the returns have been processed after 01.06.2015 i.e., the date on which amendment in Sec.200A was brought into effect and therefore, the levy of fee was to be upheld in those cases. These appeals have been listed as ITA No.330/Chny/2023 and ITA Nos.342/Chny/2023 to 351/Chny/2023. Concurring with these submissions of Ld. Sr. DR that impugned fees could have been levied while processing the returns after 01.06.2015, the levy of fee is upheld in all these appeals. On the other hand, the levy of impugned fees in all the remaining 13 appeals stands deleted. The Ld. AO is directed to revise the demand in the respective appeals as aforesaid in terms of our above order.

9. In the result, the appeals in ITA No.330/Chny/2023 and in ITA Nos.342/Chny/2023 to 351/Chny/2023 stand dismissed whereas all the other appeals stand allowed.

Order pronounced on 27th April, 2023

Sd/-	**Sd/-**
(MANOMOHAN DAS)	**(MANOJ KUMAR AGGARWAL)**
न्य□यिक सदस्य / JUDICIAL MEMBER	**लेख□सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 27.04.2023
DS

<u>आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR 5. गार्ड फाईल/GF