

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

**Before Shri Rama Kanta Panda, Accountant Member**

*AND*

**Shri Laliet Kumar, Judicial Member**

ITA No.204/Hyd/2023		
Assessment Year: 2013-14		
Ochre Media Limited 9-1-129/1, 2 <sup>nd</sup> Floor Oxford Plaza, S.D.Road Secunderabad-500 003	Vs.	ITO, Ward (TDS)-2(1) I.T.Towers, A.C.Guards Hyderabad-500 004
PAN : AAACO9391H		
(Appellant)		(Respondent)
Assessee by:		Shri H.Srinivasulu, Advocate
Revenue by:		Shri Kumar Aditya, Sr.AR
Date of hearing:		16.05.2023
Date of pronouncement:		17.05.2023

**ORDER**

**Per Shri Rama Kanta Panda, A.M.**

This appeal filed by the assessee is directed against the order dated 21.02.2023 of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre(NFAC),Delhi relating to AY 2013-14.

2. The grounds raised by the assessee are as under:-

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

2. *The Ld CIT(A), NFAC erred in upholding the levy of FEE U/s 234E amounting to RS.2,19,728 and interest thereon amounting to Rs. 71,212 aggregating to Rs 2,90,940/- for financial 2012-13 by the ITO, ward (TDS), 2(1), Hyderabad.*

3. *The l.d CIT(A), NFAC, failed to appreciate that section 200A(1)(c) was inserted by the Finance Act, 2015. W.e.f 01.06.2015 to impose the late fee Rs. 200 per day U/s 234E. The Assessee filed the TDS, Quarterly returns F.Y 2012-13 late and there was no provision to charge or impose late fee U/s 234E in F.Y 2012-13.*

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

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

6. *The Ld C1T(A), NFAC, failed to appreciate that the fee levied U/s 234E is not for rendering any service to the assessee and in Substance it is Penal in Nature.*

7. *The Ld CIT(A), NFAC, Failed to appreciate that section 200 A (1) (C) Cannot be invoked retrospectively i.e F.Y 2012-13 as Section 200 A(1)(C) was inserted w.c.f 01.06.2015*

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

9. *The Appellant prays for leave to add, amend, modify or alter any ground of appeal at the time of or before the hearing of the appeal.*

3. Facts of the case, in brief, are that the assessee is a company engaged in Media business. It filed its TDS quarterly returns/statements for second, third and fourth quarter for FY 2012-13 belatedly i.e., after the due date. Accordingly, due to the delay in filing of the quarterly TDS returns, demand of Rs. 2,90,940/- was raised which consists of late fee u/s. 234E of Rs. 2,19,728/- and interest thereon amounting to Rs. 71,212/-. The assessee preferred an appeal before the ld.CIT(A)/NFAC who dismissed the appeal.

4. Aggrieved with such order of the ld.CIT(A)/NFAC, the assessee is in appeal before the Tribunal.

5. The ld.counsel for the assessee at the outset submitted that identical issue had come up before the Tribunal in assessee's own case for AY 2014-15 and the Tribunal vide ITA No. 119/Hyd/2023 order dated 23.03.2023 has allowed the appeal

filed by the assessee holding that no late fee can be levied in intimation issued u/s. 200A of the Act in respect of TDS statement filed for a period prior to 01.06.2015. He accordingly submitted that the order of the Id.CIT(A) be set aside and the grounds raised by the assessee be allowed.

6. The Id.DR on the other hand strongly relied on the order of the lower authorities.

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A)/NFAC. We find the AO in the instant case levied late Fee u/s. 234E and interest thereon totaling to Rs. 2,90,940/-, on the ground that the assessee filed its quarterly TDS returns/statements for second, third and fourth quarters of FY 2012-13 belatedly i.e., after the due date. We find the Id.CIT(A) upheld the action of the AO by relying on various decisions, including the decision of Hon'ble Gujarat High Court in the case of Rajesh Kaurani vs. Union of India reported in 83 taxman.com 137. We find identical issue had come up before the Tribunal in assessee's own case in the immediately subsequent assessment year and the Tribunal vide ITA No.119/ Hyd/2023 order dated 23.03.2023 for AY 2014-15 had allowed the appeal filed by the assessee by observing as under:-

*"7. We have heard the rival submissions and perused the material on record. In the present case, the AO imposed late fees u/s 234E of the Act., where the enabling clause (c) was inserted in the section 200A w.e.f. 01.06.2015 and the same has been confirmed by the Ld. CIT(A) relying on the decision of Hon'ble Gujarat High Court in the case of 'Rajesh Kaurani vs. Union of India. We find that late filing fee u/s 234E of the Act has not rightly been charged in the intimation issued u/s 200A/206CB of the Act while processing the TDS returns/statements as the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. Earlier, there was no enabling provision in the*

Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for a period up to 29.06.2014, no late fee could be levied in the intimation issued u/s 200A of the Act. The details of the TDS deduction and statement filed by the assessee are available on record which were not disputed by the Revenue.

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

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

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

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

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

"22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is

*expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest.” 6. In view of the above, respectfully following ‘Shri Fatehraj Singhvi and Others’ (supra), ‘Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)’, order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and ‘Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad’, order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled.”*

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

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

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

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

8. Since the facts of the instant case are identical to the facts of the case already decided by the Tribunal in assessee’s own case for the succeeding assessment year, therefore, respectfully following the same, the grounds raised by the assessee are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 17<sup>th</sup> May, 2023

<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>	<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>
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Hyderabad, dated 17<sup>th</sup> May, 2023

*Thirumalesh/sps*

Copy to:

S.No	Addresses
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2	ITO, Ward (TDS)-2(1) I.T.Towers, A.C.Guards Hyderabad-500 004
3	DR, ITAT Hyderabad Benches
4	Guard File

*By Order*