

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 74 & 73/Mum/2023
(Assessment Years: 2013-14 & 2015-16)

M/s. Lifeline Medicare Hospitals Private Limited A-1, Gagan Chambers, Near Gokuldharm Medical Centre, Goregaon (E), Mumbai-400 063	Vs.	CIT(A) National Faceless Appeal Centre
PAN/GIR No. AABCL 4998 A		
(Appellant)	:	(Respondent)

Assessee by	:	Ms. Anushree Holani
Revenue by	:	Shri Manoj Kumar Sinha

Date of Hearing	:	02.03.2023
Date of Pronouncement	:	31.05.2023

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2013-14 and 2014-15 respectively.

2. As the facts in both these appeals are identical, we hereby pass a consolidated order by taking ITA No. 74/Mum/2023 as the lead case for the sake of convenience.

ITA No. 74/Mum/2023

3. The assessee has challenged the order of the Id. CIT(A) on the solitary issue of confirming a demand of Rs.77,600/- and Rs.1,37,600/- on account of fees payable u/s.

234E of the Act as processed u/s.200A(1)(c) of the Act for delay in filing TDS returns provided to be filed u/s. 200(3) of the Act.

4. The brief facts of the case are that the assessee company is engaged in the business of running and managing hospitals and medication centres in Mumbai. It is observed that the Assessing Officer (A.O. for short) has raised a demand of Rs.77,600/- on account of fees payable u/s. 234E of the Act for the impugned year for Q4 vide intimation u/s. 200A of the Act dated 12.06.2014 for the reason of late filing of TDS statement. The assessee contended that section 234E of the Act was made effective only from 01.06.2015 and that the same cannot be levied by way of processing of correction statement u/s. 200A of the Act for such fees u/s. 234E prior to 01.06.2015. The assessee further contended that levy u/s. 200A of the Act for outstanding fees calculated u/s. 234E of the Act prior to 01.06.2015 was unwarranted and relied on the various decisions of the Tribunal which held that no fee was leviable u/s. 234E of the Act in violation of section 200(3) of the Act, if it is found that the assessee has furnished the TDS statement after paying the taxes without any delay.

5. In an appeal before the Id. CIT(A), the said contention of the assessee was not accepted by the Id. CIT(A) which held that section 234E of the Act being a charging provision was applicable w.e.f. 01.07.2012 where the A.O. was empowered to levy fee for delay in filing quarterly TDS statement within the prescribed time u/s. 200(3) of the Act read with Rule 31A of the Rules notwithstanding section 200A of the Act clause (c) and (d) of the Act inserted w.e.f. 01.06.2015. The Id. CIT(A) relied on the decision of the Hon'ble Delhi High Court in the case of *Biswajit Das vs. Union of India* (w.p (c)

9410/2014 DATED 20.12.2018) and the decision of the Hon'ble Jurisdictional High Court in the case of *Rashmikant Kundalia vs. Union of India* [2015] SCC On Line Bom 336 which held that section 234E of the Act does not violate any provision of the Constitution and the held to be intravirous the constitution of India.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee was levied fees u/s. 234E of the Act for late filing of TDS statement for a period prior to 01.06.2015. The assessee's contention that the levy of fees u/s.234E of the Act while processing the TDS return u/s.200A of the Act prior to 01.06.2015 was unwarranted is no longer *res integra*. Various courts have held that notice u/s. 200A of the Act for levying fee u/s. 234E of the Act is not applicable to the period prior to 01.06.2016 and if made was liable to be set aside. The assessee has relied on the various decisions of the Tribunal and also the decision of the Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi vs. Union of India* [2016] 73 taxmann.com 252 (Kar) which has reiterated the proposition that while processing statement of TDS u/s. 200A of the Act no fees can be levied u/s. 234E of the Act for the period prior to 01.06.2015. The relevant extract of the decision of the Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi vs. Union of India* (supra) is cited hereunder for ease of reference:

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 2343E 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.

8. By respectfully following the above said decision, the impugned notice u/s. 200A of the Act for levy of fees u/s. 234E of the Act for belated filing of the TDS statement prior to 01.04.2015 are hereby set aside. The grounds raised by the assessee are allowed.

ITA No. 73/Mum/2023

9. As the facts in ITA No. 73/Mum/2023 are identical with that of the facts in ITA No. 74/Mum/2023, the observations given above applies *mutatis mutandis* to this appeal also.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 31.05.2023

Sd/-

sd/-

(Prashant Maharishi)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated :
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai