

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 92/Asr/2023
Assessment Year: 2019-20

Dhillon And Simran Liver
Fibro Scan Centre, 5-A,
Krishan Nagar, Lawrence
Road, Amritsar-143001

[PAN: AAKFD 3385M]

(Appellant)

V. Income Tax Officer
(TDS)-1, Amritsar

(Respondent)

Appellant by Sh. S. K. Maheshwari, ITP

Respondent by Dr. Vedanshu Tripathi, Sr. DR

Date of Hearing : 24.05.2023
Date of Pronouncement : 30.05.2023

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 31.01.2023 in respect of AY 2019-20 arising out of order passed by

the Assessing Officer (TDS)/CPC u/s 154/155 dated 20.02.2020 thereby refusing the assessee's request for rectification of the demand of Rs.35,872/-.

2. At the outset, the Id. counsel for the assessee stated that the Id. CIT(A) NFAC has rejected the appeal of the assessee without appreciating the fact of the case that the Assessing Officer (AO)(TDS-CPC) has refused to resolve the demand being created towards fee u/s 234E at Rs.44,840/- as against Rs.8,968/-. Thus, the appellant assessee objected to the creation of excess demand of Rs.35,872/- being against the late fee u/s 234E. In support of its claim, the appellant has filed a brief synopsis along with paper book comprising of 17 pages. The relevant part of the synopsis reads as under:

"This appeal is against order u/s 250 dt. 31.01.2023 bearing DIN & Order No. ITBA/NFAC/S/250/2022-23/1049278292(1) refusing to reduce Late Fee u/s 234E charged at Rs.44840/= as against Rs.8968/= payable being the maximum TDS deductible u/s 194C. Detailed facts of the case along with written submissions were filed before CIT (Appeals) NFAC Delhi dt. 20/01/2023 and for sake of brevity, the same are not being repeated. (Refer Page S.No.3 to 5)

- 1. The Ld.CIT (Appeals) NFAC, Delhi dismissed assessee's appeal observing that the issue involved is not a mistake apparent from record following The Hon'ble Apex Court in T.S Balaram ITO Vs Volkart Brothers. In this context, it is submitted that in view of the decision of jurisdictional Hon'ble Punjab & Haryana High Court in the case of Principal Commissioner of Income Tax, TDS-II Chandigarh Vs The Senior Manager (Finance), Bharat Heavy Electricals Ltd., Jhajjar, contract payments are liable to TDS u/s 194C and not u/s 194J and this decision is binding decision on all authorities under their*

jurisdiction. The Assessing Officer TDS has to follow the said decision and this issue is not subject to examination by the Assessing Officer TDS as to whether AMC charges are covered u/s 194J or u/s 194C for deduction of TDS as the issue stand settled by the Jurisdictional Punjab & Haryana High Court. (Relevant Pages of the judgement enclosed at Page Serial No.11 to 13)

Further, it is submitted that TDS return on Form No.26Q was filed u/s 194C and the same was processed by CPC TDS and TDS Certificate on Form NO.16A was issued showing 'Nature of Payment - 194C'. (Refer Copy of TDS return Page S.No.7 to 9 and Form 16A Page S.No.10) . Sir, in view of filing of TDS return, its acceptance by CPC TDS and generation of TDS certificate mentioning Nature of Payment 194C, the question of levying Late Fee taking deduction of TDS u/s 194J is uncalled for, wrong and illegal. It may be added here that in Form 26Q, there is no column to fill up TDS deductible and only column is of TDS deducted and under these circumstances, the figure of actual deduction of TDS of Rs.44840/= was reported in TDS return.

2. *Sir, reference is drawn to a recent decision dt.17/05/2023 of ITAT Ahmedabad 'A' Bench, Ahmedabad ITA No.127/Ahd/2022 in the case of Kanta Govind Singh Vs ACIT CPC TDS Ghaziabad. (Copy enclosed at Page S.No.14 to 17), the relevant Para 8 is reproduced hereunder for ready reference.*

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee being senior citizen has deposited TDS amount immediately after sale consideration was received and there was no lapse on the part of the assessee while depositing the TDS amount to the Treasury of Government of India. Due to the circumstances, the assessee could not file form 27Q within the time frame, but the assessee's intention is clear as the assessee filed the same in January 2021. Thus, merely on the ground that the assessee has not filed Form 27Q on 31.07.2019 and thus late filing cannot be the criteria for levying fees under Section 234E of the Act. Under the current circumstances, in the present case, it will be appropriate to delete the said levy of fee. Appeal of the assessee is thus allowed.

Sir, the facts of the above case are similar to the case before your good self. In the case before your good self, TDS was deducted on 09/08/2018 and deposited on 09/08/2018 i.e. the same very day which could have been deposited by 07/09/2018 and procedural error in filing TDS return is just on account of human error due to old age (accountant of the assessee Mr.Baldev Singh Saini, is senior citizen DOB:22/11/1955) and with no malafide intension of being non-cooperative to Income Tax compliances. TDS

return was filed voluntarily, the moment this omission came to notice while auditing of account books. Further, the assessee has voluntarily deposited the Late Fee of Rs.8968/= being the maximum deductible tax u/s 194C and in view of the above decision of Hon'ble ITAT Ahmedabad Bench, lenient view be taken and late fee leviable be restricted to Rs.8968/= against ' Rs.44840/= charged by CPC TDS.

Sir, the above submissions and written submissions already filed before CIT (Appeals) NFAC, Delhi may please be considered while deciding this appeal."

3. Per contra, the Id. DR stands by the impugned order.

4. We have heard the rival contention, perused the material on record, the impugned order and written submission filed. It is seen that the assessee has deduced and deposited the TDS on the date of deduction of TDS, i.e., 07.09.2018. The Id. AR contended that however, there was a procedural error occurred in filing the TDS return on account of human error due to old age of its account without a malafide intension. In our view, the facts of TDS deduction in filing of TDS return and belated filing of TDS return contemplated into levying of fee u/s 234E of the Act is subject matter of verification of facts from record which is not covered under the provisions of section 154 of the Act where an apparent mistake of the record can only be rectified. In view of that matter, we deem it fit to restore back the matter to the file of the AO to examine the issue of the levy of fee u/s 234E of the Act after verification of facts as per law and decide the demand accordingly.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.05.2023

**Sd/-
(Anikesh Banerjee)
Judicial Member**

**Sd/-
(Dr. M. L. Meena)
Accountant Member**

GP/Sr./P.S.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order