

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 179/Del/2023, A.Y. 2012-13
ITA No. 180/Del/2023, A.Y. 2013-14

KizhakkeVariath Kunhikrishnan 434, Plot No.1, Shriniketan, Dwarka, New Delhi PAN : AAMPK4421B	Vs.	ITO, Ward 72(1) New Delhi
Appellant		Respondent

Appellant by	Sh. Pankaj Garg, CA
Respondent by	Sh. Bhopal Singh, Sr. DR

Date of hearing:	06.06.2023
Date of Pronouncement:	06.06.2023

ORDER

Per Anubhav Sharma, JM :

Both appeals have been preferred by the Assessee against the order dated 05/01/2023 of of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 05.11.2022 passed u/s 154 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, CPC, TDS, Ghaziabad (hereinafter referred as the Ld. AO).

2. Heard and perused the record.

3. The facts in brief are that the issue involved in both the appeals is arising out of common background that for F.Y. 2012-13 for the second and fourth quarters there was a delay in filing the TDS/TCS return on or before the due and Ld. Tax Authorities invoking provisions of Section 234E of the Act have imposed late fee for which assessee has claimed that the provisions of levy of late fee u/s 2A (1)(c) r.w.s. 234E was introduced by Finance Act, 2015 with effect from 01.06.2015 and therefore there can be no levy of late fee. It can be appreciated that Ld. CIT(A) has taken into cognizance the order of Hon'ble Gujarat High Court in the case of **Rajesh Kourani vs. UOI (2017) 83, taxmann.com 137 (Gujarat)** and after distinguishing the decision in the case of **Fatheraj Singhvi & Ors. Vs. UOI (2016) 289 CTR 0602 (Karnataka)** observed that section 234E was introduced to make TDS provisions stringent so it is retrospective. Ld. DR has supported the same further submitting that the provision is held to be constitutional.

4. On the other hand, Ld. AR has relied the following judgments of the Tribunal to support his contention that the provision has a prospective application reproduced as under :-

- “1. *Delhi ITAT-F Bench Decision in the case of Sh. Raj Veer Singh, New Delhi vs. ACIT (CPC-TDS), Ghaziabad dated 9th July, 2021 vide ITA No. 3681/Del./2017*
2. *Dehradun ITAT-Bench Decision in the case of Om Prakash & Sons, Matta Garg & co., CAs, Dehradun vs. ITO (TDS), Dehradun dated 29th April, 2022 vide ITA No. 97/DDN/2019*
3. *Bangalore ITAT-A Bench Decision in the case of Shri Thomas Abraham, vs. ITO(TDS), Bangalore dated 29 July 2022 vide ITA no. 387 to 390/Bang./2022*
4. *Delhi ITAT-SMC Bench Decision in the case of P3P Ventures Pvt. Ltd. Gurgaon vs. DCIT (CPC-TDS) Ghaziabad dated 15th December, 2022 vide ITA no. 7593 to 7600/Del/2017*
5. *Delhi ITAT-G Bench Decision in the case of ICMC Projects Pvt. Ltd., New Delhi vs. ITD-CPC, Bengaluru Karnataka dated 25th February, 2022 vide ITA nos. 1361 to 1374/Del/2021 and 749 to 755/Del/2021*

6. *Delhi ITAT-C Bench Decision in the case of New English School & Jr. College, Kawadara vs. DCIT (CPC-TDS), Ghaziabad Dated 11th October, 2022 vide ITA nos. 122 to 129/PUN/2022*
7. *Delhi ITAT-C Bench Decision in the case of Harjeet Singh vs. ACIT (CPC-TDS), Ghaziabad Dated 27th February, 2023 vide ITA no. 734/Del/2019.”*

5. Giving thoughtful consideration to the aforesaid, the Bench is of considered opinion that the Tribunal is following a consisting approach to the issue by considering the provisions to be no retrospective. The Co-ordinate bench at Delhi for **ITA No. 734/Del/2019, Harjeet Singh vs. ACIT decided on 27.02.2023** has re-affirmed that the provision of section 234E of the Act does not have a retrospective effect. There appears to be no apparent justification to distinguish.

6. Ld. CIT(A) having noticed the views of Hon’ble Karnataka High Court and Gujarat High Court has failed to give benefits to the assessee to the effect that where there is difference of opinion on the issue between two Judgments of binding nature, then the one in favour of the assessee needs to be followed as held by Hon’ble Supreme Court in the case of Vegetable Products Ltd. 88 ITR 192 (SC).

7. In the light of aforesaid the grounds raised in the appeal are sustained and the impugned levy of penalty stands deleted. **Both the appeals stands allowed.**

Order pronounced in the open court on 6th June, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:-06 .06.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI