

**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. Nos.202 & 203/Asr/2022
Assessment Years: 2018-19 & 2019-20**

Surjit Memorial Educational Society Vill. Malwal Quadim Piareana, Ferozepur, Punjab. [PAN:-AAFTS2153M] (Appellant)	Vs.	ITO, (Exemption Ward), Amritsar. (Respondent)
---	-----	--

Appellant by	None
Respondent by	Dr. Vedanshu Tripathi, Sr. DR

Date of Hearing	22.05.2023
Date of Pronouncement	13.06.2023

ORDER

Per: Anikesh Banerjee, JM:

Both the instant appeals of the same assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals), NFAC, Delhi, [in brevity the 'CIT

(A)'] order passed u/s 250 of the Income Tax Act 1961, [in brevity 'the Act'] for A.Ys. 2018-19 & 2019-20. The impugned order was emanated from the order of the Id. Income Tax Officer, TDS, Bathinda, [in brevity 'the AO'] order passed u/s 200A of the Act.

2. At the outset, both appeals are under the same factual backdrop and have a common issue. Both the appeals are taken together, heard together and disposed of together. **ITA No. 202/Asr/2022 is taken as lead case.**

ITA No. 202/Asr/2022

3. The assessee has taken the following grounds:

“1. THE PENALTY FOR SHORT DEDUCTION OF TAX DEDUCTED FROM SALARIES AND INTEREST ON SHORT DEDUCTION LEVIED WAS WRONG AND THE SAME NEEDS TO BE DELETED.

2. THAT THE ORDER WAS BAD IN LAW AS THE SAME WAS MADE WITHOUT LISTENING TO THE ASSESSEE WHO WAS IN CANADA DURING THE PENDENCY OF THE MATTER IN APPEAL.

3. THE APPELLANT CRAVES LEAVE TO ADD, AMEND, ALTER, MODIFY ALL OR ANY OF THE

*“GROUNDS BEFORE OR AT THE TIME OF HEARING OF
THE APPEAL.”*

4. Brief fact of the case is that the late fee u/s 234E was levied for A.Y. 2018-19 amount to Rs.46,210/- and for A.Y 2019-20 amount to Rs.6,420/-. Further against the order of the Id. AO the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee challenged against the order of late fee u/s 234E and filed an appeal before us.

5. When the matter was called for hearing, none was present on behalf of the assessee. From the record we find that an adjournment petition was filed by Id. AR. The Id. AR has made the following request for adjournment which is reproduced as below:

“Respectfully submitted that the above-stated cases have been fixed up for hearing on 22/05/2023; in this connection, it is respectfully submitted that the undersigned is out of station on some urgent piece of work and accordingly shall not be able to appear before the Hon’ble Bench on the appointed date.”

6. There is no such any valid reason for adjournment. So, the prayer for adjournment is rejected by the bench. The matter is taken as *ex parte* qua for assessee after hearing the ld. DR. The matter will be disposed of accordingly.

7. The ld. DR vehemently argued and placed reliance on the appellate order.

The relevant para 7 is reproduced as below:

“7.0 Even on merits on the basis of material available on record, the grounds of appeal of the Appellant appear indefensible. Post 1.6.2015, there is no dispute that the Late fee u/s 234E of the Act is applicable for all TDS returns which are filed late, i.e. after the due date, and it is levied through the machinery provision of Sec. 200A of the Act. Hence even on merits, the appeal will not succeed.”

8. We heard the rival submission of ld. DR and relied on the orders of revenue authorities. The assessee has tax deducted at source (TDS) for various quarters in Form No. 26Q for AY 2018-19 to 2019-20 (Financial Years 2017-18 to 2018-19). There was a delay in filing the above TDS statement and therefore the AO by intimation u/s. 200A of the Act, levied late fee u/s. 234E of the Act. Under sec.234E of the Act, if there is a delay in filing statement of TDS within the

prescribed time then the person responsible for making payment and filing return of TDS is liable to pay by way of fee a sum of Rs. 200/- per day during which the failure continues. Section 234E of the Act inserted by the Finance Act, 2012 w.e.f. 1-7-2012. reads as follows: -

"234E. Fee for default in furnishing statements.—(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."

7.1. Clauses (c) to (f) of section 200A(1) was substituted by the Finance Act, 2015 w.e.f. 1-6-2015. The assessee contended before NFAC (CIT(A)/first appellate authority) that AO could levy fee u/s.234E of the Act while processing a return of

TDS filed u/s.200(3) of the Act only by virtue of the provisions of sec.200A(1)(c), (d) & (f) of the Act and those provisions came into force only from 1-6-2015 and therefore the authority issuing intimation u/s. 200A of the Act while processing return of TDS filed u/s.200(3) of the Act, could not levy fee u/s. 234E of the Act in respect of statement of TDS filed prior to 1-6-2015. We respectfully relied on the order of High Court of Punjab And Haryana in the case of **Dr. Amrit Lal Mangalv.Union of India, [2015] 62 taxmann.com 310 (Punjab & Haryana)**

"12. The Karnataka High Court in Lakshminirman Bangalore (P.) Ltd.'s case (supra), in view of the aforesaid enunciation, had held Section 234E of the Act to be valid with the under noted conclusion:—

"24. Thus, view from any angle it cannot be held that Section 234E of the Income Tax Act, 1961 suffers from any vices for being declared to be ultra vires of the Constitution. In other words it has to be held that the impugned Section i.e., 234E of the Income Tax Act, 1961 is intra vires of the Constitution."

13. With reference to the judgments relied upon by learned counsel for the petitioners, suffice it to notice that the principles of law enunciated therein are well recognized but in view of pronouncements of Bombay High Court in RashmikantKundalia's case (supra) and Karnataka High Court in Lakshminirman Bangalore (P.) Ltd.'s case (supra), with which we express our concurrence where Section 234E of the Act has been held to be intra vires, no benefit can be derived by the petitioners from such enunciations. Further, all the pronouncements relied upon by the petitioners are prior to incorporation of Section 234E of the Act by the Finance Act, 2012 with effect from 1.7.2012.

14. In view of the above, we find that the provisions of Section 234E of the Act are neither ultra vires nor unconstitutional and, thus, finding no merit in the instant writ petition, the same is hereby dismissed."

8.1. The assessee's case is falling after the 01/06/2015 related to AY 2018-19 and 2019-20. We do not interfere in the order of ld. CIT(A). The issue is well settled against the assessee.

9. As noted at the beginning of this order, the facts and issue in both these appeals are common. So, our observations qua in **ITA No.202/Asr/2022** are, mutatis mutandis, equally applicable to **ITA No.203/Asr/2022** also.

10. In the result, the appeals of the assessee bearing **ITA No. 202/Asr/2022& ITA 203/Asr/2022** are dismissed.

Order pronounced in the open court on 13.06.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

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