

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

(VIRTUAL COURT)

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

I.T.A. Nos. 107 to 109/Asr/2023

Assessment Years: 2013-14, 2015-16 & 2016-17

Gulmarg Development
Authority, Executive Engg.
Gulmarg Development
Authority, Tangmar
Baramulla Jammu & Kashmir
193402

[PAN: AMRG 11044F]
(Appellant)

V. Income Tax Officer,
(TDS), Srinagar

(Respondent)

Appellant by Sh. Mohd. Iqbal Untoo, CA
Respondent by Sh. Prashant Singh, Sr. DR

Date of Hearing : 19.06.2023
Date of Pronouncement : 22.06.2023

ORDER

Per Bench:

These appeals have been filed by the assessee against the order of the Ld. CIT(A) National Faceless Appeal Centre (NFAC), Delhi even dated 07.04.2022 in respect of Assessment Years 2013-14, 2015-16 & 2016-17.

2. The Ld. AR requested condonation of the Delay of 311 days explaining the reasons for delay in written application which reads as under:

*“2. The appellant being the DDO had never before received the order under section 250 passed by the **National Faceless Appeal Centre** and came to know of the fact **as on 17.02.2023**, when the appellant/DDO **received the phone call** from the jurisdictional ITO TDS SRINAGAR regarding the initiation of recovery proceedings of outstanding demand of Rs 17,25,946/- against your TAN. The DDO told the Income Tax Officer that the appeal has already been filed and is pending for disposal before the CIT(A). The ITO TDS Srinagar informed the DDO that the appeal has already been dismissed by the CIT(A) and the Notice u/s 221 has been issued as on 23.01.2023 wherein you were required to furnish the proof of payment of outstanding demand especially late filing fee in my office AAYAKAR BHAWAN ROOM NO 208 Near GOVT SIK FACTORY RAJBAGH SRINAGAR as on 30.01.2023. The DDO thereafter raised the matter with his counsel that the appeal has been dismissed by the CIT(A) as on 07.04.2022. The counsel informed the DDO that any notice or order issued by the department would have been served on the **email id registered on the E- filling Portal i.e AOGULMARG@GMAIL.COM**.*

3. Your honors attention is invited towards the **fact that email id of the assessee available before the Department**. In this regard your honors attention is invited towards the fact that:-

- *The assessee has filed the grievance before the Income Tax Helpdesk as on 02.09.2020 regarding unable to login on the e-filing portal. The Income tax Helpdesk has provided the resolution on the email id of the assessee i.e AQGULMARG@GMAIL.COM. **(Copy of proof of email is enclosed)**. This clearly indicates that the email id of the assessee was available before the Income Tax Department.*
- *The Counsel of the assessee has filed the detailed responses during the appellate proceedings before the CIT(A) NFAC and the intimation regarding submission of responses has also been sent on the email of the assessee i.e AOGULMARG@GMAIL.COM. **(Copy of proof of email is enclosed for your reference)**. This also clearly indicates that the email id of the assessee was available before the CIT(A) NFAC.*

- *The appeal has been filed manually before the CIT(A) and all the contact numbers and even email id of the counsel were mentioned in the power of authority of the appeal. **(Copy of proof of said contention is enclosed for your reference).***

4. *The CIT(A) while passing the order u/s 250 **has totally ignored the email id registered on the E-filing portal as aogulmarg@gmail.com** and has sent the orders on the email id of the TIN FACILIATION CENTRE. **(Copy of screenshot of portal reflecting that the order u/s 250 has been sent on email of the TIN FACILITATOR is enclosed for your reference).** The TIN FACILITATION CENTRE never informed the DDO that the appeal has been dismissed by the CIT(A) as the DDO was in an honest belief that if any order will be passed by the CIT(A), the same will be sent on the registered email-id of the portal i.e **AOGULMARG@GMAIL.COM**, **(Copy of proof of portal reflecting email id of the assessee is enclosed for your reference).** Therefore no single communication has been received from the CIT(A) by the assessee. Had the assessee received the Communication from the CIT(A) in relation to passing of order u/s 250, the DDO would have loved to file an appeal before the Honorable Income Tax Appellate Tribunal.*

That was the reason, which caused delay in submitting the appeal before your honour within the permitted time of 60 days.

The fact as stated above are true, and the said reasons for not filling appeal in time were beyond the control of the appellant.”

2.1 From the above, it is evident that there was late communication of the impugned order from the office of the CIT(A) although email of appellant was updated on department portal and the CIT(A) while passing the order u/s 250 has totally ignored the email id registered on the E-filing portal as aogulmarg@gmail.com and has sent the orders on the email id of the TIN FACILIATION CENTRE which caused late communication to DDO and late filing of appeal in turn. Considering the reasonable cause, we condone

the delay in filing the appeal and admit the captioned five appeals for hearing on merits.

3. At the outset, on identical facts in ITA No. 107, 108 and 109/Asr/2023, the Ld. Counsel for the appellant submitted that the appellant assessee is a development authority established under the Jammu & Kashmir Development Act 1970 read with development Authority rules 1976 and is fully controlled by the Government of Jammu & Kashmir. He contended that no late fee u/s 234E can be levied before 1st June 2015 during proceeding under section 200A as there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E.

In support, the appellant has relied on following judicial pronouncements-

1. ITAT, Amritsar in the case of Sibia Healthcare Private Limited v DCIT (TDS), Gaziabad I.T.A. No.90/Asr/2015 dated 9-Jun-2015
2. ITAT A Bench, Chennai in the case of Smt. G. Indhirani
3. Sri Fatheraj Singhvi vs. Union of India [2016] reported in 289 CTR 602, (the Hon'ble Karnataka High Court).
4. ITAT Delhi Bench in case of Samikaran Learning Pvt. Ltd. (ITA Nos. 4050 to 4054/Del/2016).
5. ITAT Pune in case of Gajanan Constructions vs. DCIT, CPC (TDS), (2016) 73 taxman.com 380 (Pune Trib.)

4. Per contra, the Ld. DR supported the impugned order and contended that the deductor had filed his TDS Quarterly statement of Quarter 4 (Form-

26Q) of F.Y.2012-13 on 19/09/2017 which was due to be filed on 15/05/2013. Therefore, it was delayed by 1588 Days. Therefore, TDS-CPC has imposed a late fee u/s 234E for 1588 days amounting to Rs. 2,53,6001- for the delay in filing of Quarterly TDS statement in the intimation dated 22/09/2017 issued u/s 200A of the Act. Accordingly, he contended that the CIT(A) was justified.

5. We have heard the rival contention and perused the material on record, impugned orders.

6. That the amended law made the provision to compute fee as per section 234E in the intimation u/s 200A by Finance Act, 2015 and the same is effective from 01/06/2015. Meaning thereby, no fees could be levied u/s 234E while issuing intimation u/s 200A for the period prior to 01-06-2015 as power to charge/collect fees u/s 234E while issuing intimation u/s 200A was vested with revenue authorities only on substitution of clause (c) to section 200A vide Finance Act 2015 w.e.f. 01-06-2015. However, the CIT(A) has been of the view that the AO is empowered to levy fees u/s 234E if intimation u/s 200A is issued after 01.06.2015 by virtue of the finance Act, 2015 which can not be approved as the correct interpretation of the law.

7. The CIT(A) has while distinguishing the coordinate Bench decision has not been appreciated the facts of the case, in issuance of intimation under section 200A. In any cases before June 2015 no such levy shall be applicable during intimation under section 200A after 01.06.2015 as it is procedural lapse. Thus, relief has been provided to all cases where before amendment, 234E was levied during proceeding u/s 200A. The CIT(A) held that fee under section 200A after 01/06/2015, irrespective of the quarter or financial year that means applicable even for the period prior to amendment if intimation u/s section 200A is issued after 01/06/2015. In our view, the amendment in section 200A by way of insertion of clause (c) was only with effect from 1-6-2015 and therefore, the interpretation of the amended mandate by the AO/CPC/TDS, raising demand by Income Tax Authorities for levying late fee under section 234E for period prior to 1-6-2015 would not be sustainable.

8. In the case of “Bhaskar Roy vs. Income-tax Officer, TDS-1(2)”, Kolkata [2022] 135 taxmann.com 336 the Kolkata – Tribunal , deleted the demand raised by Income Tax Authorities for levying late fee under section 234E for period prior to 1-6-2015 by observing vide para 3 and 6 as under:

3. We have heard rival submissions and gone through the facts and circumstances of the case. At the outset, the Ld. Counsel for the assessee Shri K. M. Roy submitted that the

issue involved in all these appeals are pertaining to levy of late fee u/s. 234E and which is prior to 1-6-2015. According to Ld. AR, the issue is no longer res integra. According to him, the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi v. Union of India [\[2016\] 73 taxmann.com 252](#) has held that the amendment in section 200A by way of insertion of clause (c) is only with effect from (w.e.f.) 1-6-2015 and therefore no fees would be payable by the assessee for any period prior to 1-6-2015. And further, according to the Ld. AR, this decision of the Hon'ble Karnataka High Court has been followed by the same High court in the case of Sree Ayappa Educational Charitable Trust v. Dy CIT [Writ Petition No. 618 of 2015, dated 12-12-2017]. However, the Ld. CIT(A) relying on the decision of the Hon'ble Gujarat High Court in Rajesh Kourani (supra) which is revenue favouring held that section 234E of the Act was a charging provision creating a charge for the levy of fees for default in filing of TDS statement and therefore fees would be levied even without the regulatory provision being found in section 200A for computation of fees. However, according to the Ld. AR, it is a settled position of law that when there is no decision of the jurisdictional High court, and if there is conflicting judgment of two non-jurisdictional High Courts on an issue, the view in favour of the assessee should be taken in terms of the decision of the Hon'ble Supreme Court in CIT v. Vegetable products Ltd. [\[1973\] 88 ITR 192](#). And, therefore, according to the Ld. AR since the Tribunal in several decisions have followed the Hon'ble Karnataka High court decision Fatehraj Singhvi (supra) and Rose Rock Real Estate India (P.) Ltd. v. ACIT [IT Appeal No. 4824 (Mum.) of 2019, dated 2-9-2021] as well as by the Mumbai Bench in the case of National Laminate Corpn. v. ITO [IT Appeal No. 4902 (Mum.) of 2018, dated 10-12-2019] the assessee favour decision may be followed while deciding this appeals.

6. We note that there is no decision of the Hon'ble Calcutta High Court on the issue in hand. Therefore, we are inclined to follow the ratio decidendi of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi (supra) and Sree Ayappa Educational Charitable Trust (supra) in the light of the Hon'ble Supreme Court decision in Vegetable Products (supra) that if there is no jurisdictional High Court's decision on an issue then the view taken in favour of the assessee can be followed. Therefore, we are inclined to hold that the demand raised by the Income-tax Authorities for levying late fee u/s. 234E of the Act for the period prior to 1-6-2015 cannot be sustained and we order accordingly. However, we hasten to add that Hon'ble Karnataka High Court while passing the order had held the order to be prospective in operation and had clarified that if an assessee had made payment of fees u/s. 234E as per the demand/intimation u/s. 200A of the Act for the period prior to 1-6-2015 then it cannot claim the refund since the Hon'ble Karnataka High Court has held its order to be prospective in operation.

9. In the two appeal in ITA No 107 and 108/Asr/2023 and 1st quarter in ITA No.109/Asr/2023 since the issue is pertaining to levy of late fee u/s 234E, prior to 1-6-2015. Thus, the issue is no longer res integra. Accordingly, following the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi v. Union of India [2016] 73 taxmann.com 252 we hold that the amendment in section 200A by way of insertion of clause (c) is only with effect from (w.e.f.) 1-6-2015 and therefore no fees would be payable by the assessee for any period prior to 1-6-2015.

10. In view of the Factual matrix of the case, and the amendment in section 200A, we hold that the demand raised by the Income-tax Authorities for levying late fee u/s. 234E of the Act for the period prior to 1-6-2015 cannot be sustained. Thus, the demand raised in ITA No. 107 and 108/Asr/2023 and 1st quarter in ITA No.109/Asr/2023 is deleted. It is clarified that if an assessee had made payment of fees u/s. 234E as per the demand/intimation u/s. 200A of the Act for the period prior to 1-6-2015 then it cannot claim the refund.

11. In the ITA No. 109/Asr/2023 and 2nd, 3rd and 4th quarter the issue of levying of late fee u/s 234E is after the period of 1-6-2015. The counsel argued that the Ld. CIT(A) decided the matter without considering its submission. He requested to remand these appeals back to the CIT(A) for

afresh adjudication. However, we have adjudicated on this issue in the assessee's own case in ITA No. 107, 108 and 109/Asr/2023 as above and law is settled by higher judicial forums on the levy of late fee u/s 234 E of the Act. Therefore, we consider it deem fit to remand back the issue involves in this appeal to the AO for limited purpose to verify the period involved for levy of late fee u/s 234 E of the Act and compute the levy of fee u/s 234E of the Act for the period after 01/06/2015, and ordered accordingly.

12. In view of the aforesaid discussion, the subject 3 appeals filed by the assessee are disposed of in the manner discussed as above.

Order pronounced in the open court on 22.06.2023

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