

**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. 189/Asr/2022  
Assessment Year: 2015-16**

Surjit Memorial Educational Society C/o Jaswinder Singh And Associates, C.A. 53, Street No.1, Dhawan Colony, Ferozepur City, Punjab. [PAN:-AAFTS2153M] <b>(Appellant)</b>	Vs.	Income Tax Officer (Exeptions), Ward-Amritsar, Punjab.  <b>(Respondent)</b>
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<b>Appellant by</b>	None
<b>Respondent by</b>	Sh. Digvijai Kumar, Sr.DR.

<b>Date of Hearing</b>	08.08.2023
<b>Date of Pronouncement</b>	21.08.2023

**ORDER**

**Per: Anikesh Banerjee, JM:**

The instant appeal of the assessee is directed against the order of the Id. NFAC, Delhi, (in brevity 'the CIT (A)') order passed u/s 250 of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2015-16. The impugned order was emanated from the order of the Id. CPC-TDS, (in brevity the Id. AO) order passed u/s 200A of the Act.

2. The assessee has taken the following grounds:

*“1. THE LATE FEE IMPOSED U/S234E FOR THE FINANCIAL YEAR 2014-15 WAS WRONG AS THE CASE OF THE SAME FINANCIAL YEAR HAD ALREADY BEEN DECIDED IN FAVOUR OF THE ASSESSEE AND THE ASSESSEE JUST IN ORDER TO REFELCT TDS DEDUCTED IN CASE OF ONE DEDUCTEE RE-FILED THE E-TDS RETURN UNDER THE BONAFIDE BELIEF THAT HIS LATE FEE FOR THE FINANCIAL YEAR 2014-15 HAS ALREADY BEEN WAIVED OFF IN APPEALS AND WAS NOT LIABLE TO IT AGAIN.*

*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, AMDND, ALTER, MODIFY ALL OR ANY OF THE GROUNDS BEFORE OR AT THE TIME OF HEARING OF THE APPELA.”*

3. The appeal of the assessee was filed with delay of 30 days. The assessee filed the petition for condonation of delay. The assessee explained that the delay was due to oversight of e-mail and un-intentional human error occurred. The ld. DR had not made any objection in the issue. Accordingly, the delay for 30 days is condoned.

4. When the appeal was called for hearing, none was present. On perusal of record, we find that the assessee filed an adjournment petition and assessee was

unable to represent the matter because assessee's counsel for out of state. The issue is well settled by the same bench of ITAT-Amritsar. The adjournment petition is not covered any plausible reason for adjournment of hearing. Accordingly, the adjournment petition is rejected. We proceed to dispose of the matter *ex parte qua* for assessee after hearing the Id. DR.

5. Brief fact of the case is that the assessee deducted the TDS and filed the return. Due to late filing of the return, the late fee was levied u/s 234E r.w.s.200A of the Act. The TDS return was processed, and the late fee was initiated to Rs.2,58,210/- U/s 234E. The assessee filed the appeal before the Id. CIT(A) by challenging the order of the Id. AO. After a detailed discussion the Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

6. The Id. DR vehemently argued and relied on order of revenue authorities. The Id. DR argued that the issue is well settled by the same bench in favour of the revenue.

7. We heard the submission of the Id. DR and relied on the documents available in the record. On perusal of the demand notice u/s 200A was duly issued by TRACES. We find the short deduction of TDS is Rs.1,47,454/- where as the late filing fee u/s 234E is Rs.1,67,750/-. The assessee challenged before the Bench related to invoking late fee u/s 234E the amount to Rs.4,11,014/- which is summed up the short deduction of TDS amount to Rs.1,47,454/- and

late filing fee U/s 234E amount to Rs.1,67,750/-. So, accordingly, the calculation of demand amount as per the revenue is inserted as below:

Sl. No.	Type of Default	Default Amount (₹)	Amount reported as 'Interest / Others' claimed in the statement (₹)	Payable (₹)
1	Short Payment	0.00	0.00	0.00
2	Short Deduction/Collection	1,47,454.00	0.00	1,47,454.00
3	Interest on payments default u/s 201(1A)/206C(7)			
3(a)	Interest on short payment	0.00	0.00	0.00
3(b)	Interest on late payment	0.00	0.00	0.00
4	Interest on deduction/collection default u/s 201(1A)/206C(7)			
4(a)	Interest on short deduction/collection	95,810.00	0.00	95,810.00
4(b)	Interest on late deduction/collection	0.00	0.00	0.00
5	Late Filing fee u/s 234E	1,67,750.00	0.00	1,67,750.00
Payable (₹)				4,11,014.00
Rounding-Off (to the nearest multiple of ten rupees) (₹)				-4.00
Net Payable (₹)				4,11,010.00

8. The assessee is only liable to late filing fee u/s 234E is Rs.1,67,750/-. After receiving this notice, the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Although the adjudication was done on total amount of Rs.4,11,014/- which is quite wrong. So, the only late filing fee is concerned u/s 234E amount to Rs.1,67,750/-. Accordingly, the demand is duly rectified. The issue is already determined by the similar bench of ITAT, Amritsar in the cases of assessee's own case **ITA No. 202 & 203/Asr/2022 date of pronouncement 13/06/2023** and M/s 11, Corps Zone Workshop in I.T.A. Nos.114 to 120 & 127/Asr/2023 order dated 07.07.2023.

The relevant paragraphs of **M/s 11, Corps Zone Workshop**(supra) is duly inserted as below:

*“7. We heard the rival submission and relied on the documents available in the record. We find that the petitioner's central challenge viz. of non-permissibility to levy fee under section 234E of the Act till section 200A of the Act was amended with effect from 01.06.2015. We have noticed the relevant statutory provisions. The picture that emerges is that prior to 01.07.2012, the Act contained a single provision in section 272A providing for penalty in case of default in filing the statements in terms of section 200 or proviso to section 206C. Such penalty was prescribed at the rate of Rs.100 for every day during which the failure continued. With effect from 01.06.2012, three major changes were introduced in the Act. Section 234E as introduced for the first time to provide for charging of fee for late filing of the statements. Such fee would be levied at the rate of Rs.200/- for every day of failure subject to the maximum amount of tax deductible or collectible as the case may be. The assessee has respectfully relied on **Hindustan Steel Ltd. (supra)** & both the orders are related to penalty proceeding. The Section 234E is introduced for charging fees for late filing of statement. With full regards we find both the cases are factually not similar in assessee's case.*

*7.1. Even in absence of section 200A of the Act with introduction of section 234E, it was always open for the revenue to demand and collect the fee for late filing of the statements. Section 200A would merely regulate the manner in which the computation of such fee would be made, and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being*

*found for (in) section 200A for computation of fee, the fee prescribed under section 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, the re-casted clause (c) of sub-section (1) of section 200A would be in nature of (a) clarificatory amendment. Even in absence of such provision, as noted, it was always open for the revenue to charge the fee in terms of section 234E of the Act.*

7.2. *The ld. DR and the ld. CIT(A) relied on the order of the Hon'ble Karnataka High Court in the case of **Fatheraj Singhvi v. Union of India [2016] 73 taxmann.com 252** had considered the issue and after analysing the provisions of section 234E of the Act and section 200A of the Act and held that in the absence of enabling provision in section 200A of the Act, the Assessing Officer cannot levy late fee under section 234E of the Act, while processing the quarterly TDS return filed for the period of the respective assessment years prior to 1-6-2015. A similar view has been expressed by the **Hon'ble Kerala High Court**, respectfully relied by the ld. DR in the case of **Olari Little Flower Kuries (P.) Ltd. v. Union of India [2022] 134 taxmann.com 111/440 ITR 26** after considering the decision of Hon'ble Karnataka High Court in the case of **Fatheraj Singhvi** (supra) and held that the provisions of section 200A of the Act were mandated to enable computation of late fee payable under section 234E of the Act, at the time of processing of quarterly TDS return and the said amendment came into effect from 1-6-2015. Thus, the intimation issued by the ld. AO under section 200A of the Act to levy late fee for belated return for the period prior to 1-6-2015 is invalid. Subsequent to the decisions of the Hon'ble Karnataka High Court and the Hon'ble Kerala High Court, series of decisions have been rendered by various Benches*

*of the Tribunal and held that late fee under section 234E of the Act cannot be levied for the period prior to 1-6-2015, because there was no enabling provision to levy such late fee.”*

We respectfully relied on the order of High Court of Punjab And Haryana in the case of **Dr. Amrit Lal Mangal v. 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 Rashmikant Kundalia'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.”*

9. In assessee's case, the issue is related to Q-4 for A.Y. 2015-16. So, the late fee invoking u/s 234E amount to Rs.1,67,750/- is upheld. The short

deduction of TDS amount to Rs.1,47,454/- is not under purview of Section 234E. So, the issue is remained un-adjudicated. Accordingly, the impugned order is upheld. The appeal of the assessee is dismissed. Ordered, accordingly.

10. In the result, the appeal of the assessee bearing **ITA No. 189/Asr/2022** is dismissed.

**Order pronounced in the open court on 21.08.2023**

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