

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR

BEFORE SHRI R.S. SYAL, HON. VICE-PRESIDENT &
SHRI PARTHA SARATHI CHAUDHURY, HON. JUDICIAL MEMBER
(Through virtual hearing)

ITA Nos.424 to 427/NAG/2022
(A.Y. 2013-14 to 2016-17)

M/s. Sricon Logistics Pvt. Ltd., Sricon House, 25 Pragati Layout, Rajeev Nagar, Somalwada, Wardha Road, Nagpur-440 025 PAN: AACCE 1775 D	vs	ACIT-TDS, Circle-1, Nagpur.
Appellant		Respondent

Assessee by	:	Shri Mahavir Atal, AR
Revenue by	:	Shri Rish Kumar Bisen, DR
Date of hearing	:	22/08/2023
Date of pronouncement	:	23/08/2023

ORDER

Per Bench:

These appeals preferred by the assessee emanates from the separate orders of National Faceless Appeal Centre [NFAC], Delhi, all dated 09.09.2022 for A.Ys.2013-14 to 2016-17 as per the grounds of appeal on record.

ITA Nos. 424 to 426/NAG/2022

2. The only issue raised in these appeals is the charging of late fees u/sec. 234E of the Income Tax Act, 1961 (for short, "the Act") for the Q1 arising in A.Y. 2013-14 and Q1 to Q4 arising in A.Ys. 2014-15 & 2015-16.

3. At the outset, it is observed that there is a delay of 24 days each in filing the present appeals before the Tribunal. Ld.counsel for the assessee, at the time of hearing, explained the delay, and after hearing the submissions, we observe that such delay cannot be attributed to any deliberate or *malafide* intention of the assessee, if any, in these cases, and such delay was rather caused due to various circumstances beyond the control of the assessee. Furthermore, principally we observe that in these cases, the issue is squarely covered in favour of the assessee by the decision of Hon'ble Kerala High Court in *Olari Little Flower Kuries (P.) Ltd. v. UOI & Ors.* (2022) 440 ITR 26 (Ker.). Ld.DR also did not raise any objection for condonation of delay. Hence, the delay in filing all these appeals is condoned and the cases were heard and adjudicated on merits. Since the facts and circumstances and issues in these appeals are absolutely similar and identical, all the matters were heard together and disposed off vide this consolidated order.

4. The brief facts of the case(s) are that the assessee filed the TDS returns for the respective quarters belatedly. Based on that, the Assessing Officer (AO) levied late fee u/sec. 234E of the Act. The assessee approached the NFAC but without success. Aggrieved thereby, the assessee has approached the Tribunal.

5.1 The solitary issue raised in these appeals is against confirmation of fee u/sec. 234E imposed by the AO. The assessment years involved

in these appeals are 2013-14, 2014-15 & 2015-16, which shows that the fees u/sec.234E has been imposed for the delay in furnishing the statements for quarters prior to 01/06/2015.

5.2 Sec. 200A deals with processing of statements of tax deducted at source. Clause (c) of sec.200A(1) was inserted by Finance Act, 2015 w.e.f. 01/06/2015 providing for levy of fee u/sec. 234E of the Act. In that view of the matter, such fee u/sec. 234E can be levied only for the default committed after 01/06/2015 and not prior to that. The Hon'ble Kerala High Court in *Olari Little Flower Kuries (P.) Ltd. v. UOI & Ors.* (2022) 440 ITR 26 (Ker.) has confirmed the non-imposition of fee for the period prior to 01/06/2015. Similar view has been taken in *Jiji Varghese v. ITO (TDS)* (2022) 443 ITR 267 (Ker.) holding that no interest u/sec. 234E can be imposed for the period of respective assessment years prior to June 01, 2015. Thus, it is seen that issue raised in these appeals is covered in favour of the assessee. Following the precedents, we overturn the impugned order(s) on the sole issue.

ITA No.427/NAG/2022

6 That, this appeal pertains to A.Y. 2016-17. In this regard, Id.AR submitted that they are in appeal for the first quarter for the F.Y. 2015-16 comprising from April to June. In this regard, he submitted that for the months of April and May, fees u/sec. 234E will not be leviable. Since the powers to the Department have been given from

01/06/2015, therefore, for June only for F.Y. 2015-16, the fees would be leviable. Therefore, for the first two months of April and May for the first quarter in F.Y. 2015-16, the case-laws as aforesaid shall apply.

7. We are of the considered view, after considering the facts and circumstances and the aforesaid judicial pronouncements that the appeals of the assessee in ITA Nos. 424 to 426/NAG/2022 are covered by the above stated judicial pronouncements and also for ITA No. 427/NAG/2022 for A.Y. 2016-17 in the first quarter of F.Y. 2015-16 for the months of April and May i.e. also covered by the aforesaid pronouncements, however, for the month of June, the fee has been rightly levied u/sec. 234E of the Act by the Department on the assessee, therefore the appeal of the assessee in ITA No. 427/NAG/2022 is partly allowed.

6. In the combined result, appeals filed by the assessee in ITA Nos. 424 to 426/NAG/2022 are allowed and in ITA No. 427/NAG/2022 is partly allowed.

Order pronounced in open Court on 23rd August, 2023.

Sd/-
(R.S. SYAL)
VICE-PRESIDENT

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 23rd August, 2023

vr/-

*ITA Nos.424-427/NAG/2022
M/s. Sricon Logistics Pvt. Ltd.*

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench Pune.
6. Guard File.

By Order

//TRUE COPY //

Senior Private Secretary
ITAT, Pune.