

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI G. S. PANNU, PRESIDENT
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
ITA No.6260/Del/2018
(ASSESSMENT YEAR 2016-17)**

| | | |
|--|-----|--|
| Yamuna Khadar Shiksha Samiti C/o. Kapil Goel Adv, F-26/124, Ssector-7, Rohini, Delhi-110085 PAN- AAAAY5044M (Appellant) | Vs. | ITO, TDS Muzaffarnagar , Uttar Pradesh (Respondent) |
|--|-----|--|

| | |
|---------------|---------------------------|
| Appellant by | Sh. None |
| Respondent by | Sh. Vivek Vardhan, Sr. DR |

| | |
|-----------------------|------------|
| Date of Hearing | 21/08/2023 |
| Date of Pronouncement | 20/08/2023 |

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the assessee is against the order of Learned Commissioner of Income Tax (Appeals), Muzaffarnagar, ["Ld. CIT(A)", for short], dated 26/06/2018 for Assessment Year 2016-2017.

2. The grounds of Appeal are as under:-

1. *"That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by ITO (TDS) Muzafarnagar levying invalid and unlawful fees u/s 234E (Rs.344100) which is covered in favour of appellant by various binding judicial precedents clearly holding that prior to amendment by Finance Act 2015 in section 200A(01/06/2015) no fees could be levied and thereby flouting rule of law.*

2. That on the facts and in the circumstances of the case and in law, ld. CIT-A erred in sustaining the order passed by ITO (TDS) Muzafarnagar levying invalid and unlawful fees u/s 234E where order u/s 200A dated 08/01/2018 is apparently time barred and beyond the purview of law.

3. That the appellant craves to add assessment year /alter any/all grounds of appeal before or at the time of hearing of the appeal.

3. None appeared for the assessee when the matter is called. The records reveals that the notices issued by the Registry were duly served on the Assessee, but the Assessee remained absent, therefore, we are compelled to decide the matter on going through the material available on record and on hearing the Ld. Departmental Representative.

4. Brief facts of the case are that, an order u/s 200A of the Income Tax 1961, ('Act for short) has been passed on 08/01/2018 for the Assessment Year 2016-17 by levying fee of Rs. 3,44,100/- u/s 234E of the Act. The assessee preferred an appeal before the CIT(A), the CIT(A) vide order dated 26/06/2018, dismissed the Appeal filed by the assessee. Aggrieved by the order of the CIT(A) dated 26/06/2018 for the Assessment Year 2016-17, the assessee preferred the present Appeal on the grounds mentioned above.

5. As per the Grounds of Appeal, the assessee contended that the CIT(A) erred in sustaining the order passed by the ITO (TDS), Muzaffarnagar levying fees u/s 234E (Rs. 3,44,100/-) which is covered in favour of the assessee by

various binding judicial precedents which held that prior to Amendment by Finance Act, 2015 in Section 200A (01/06/2015 no fee could be levied and thereby the CIT(A) committed error and further raised the ground that the CIT(A) erred in sustaining the order of ITO (TDS) passed u/s 234E wherein the order u/s 200A dated 08/01/2018 is time bared and beyond the purview of law.

6. The Ld. Departmental Representative relying on the order of the CIT(A) submitted that the grounds of Appeal of the assessee are devoid of merit and the same are deserves to be dismissed.

7. Heard the Ld. Departmental Representative and perused the material available on record.

8. As seen from the records, the Assessee had not filed quarterly TDS return on time, therefore the penalty of Rs. 3,44,100/- has been imposed by the A.O. u/s 234E of the Act for A.Y 2016-17. As per the Grounds of Appeal, it is the specific case of the assessee is that since Amendment for Section 200A came into effect on 01/06/2015 vide Finance Act, 2015, ITO and the CIT (A) have committed error in levying fees u/s 234E of the Act to the tune of Rs. 3,44,100/- for the year under consideration.

9. We are aware of the Amendment to Section 200A which came into effect from 01/06/2015. It has been declared through various judicial pronouncement that the Amendment to Section 200A of the Income Tax Act which into effect from 01/06/2015 is prospective in nature and the Revenue

Authorities cannot levy fees u/s 234E of the Act prior to 01/06/2015. In the present case, the assessment year being 2016-17, the Amended Provision of Section 200A of the Act is applicable only after 01/06/2015 and the ITO can levy fees u/s 234E of the Act only for second third quarters but not for the first quarter. The said fact as to whether levying of fees u/s 234E of the Act in the year under consideration by the A.O. is either for the First quarters or to the all the quarters is not forth coming from the records. Therefore, we restore the matter to the file of the A.O. with a direction to decide the issue afresh in compliance with the above observations.

10. In the result, the Appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 20th September, 2023

Sd/-
(G. S. PANNU)
PRESIDENT
Dated: 20/09/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, Sr ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

