आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Vice-President
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.494 to 499/Hyd/2023		
Assessment Years: 2013-14 & 2014-15		
Sowbhagya Biotech (P) Ltd Hyderabad	Vs.	Income Tax Officer Ward (TDS)-2(2) Hyderabad
(Appellant) PAN:HYDS15729A		(Respondent)
Assessee by:	Shri A.V. Raghuram, Advocate	
Revenue by:	Shri Sbhakeer Ahmed, DR	
Date of hearing:	22/11/2023	
Date of pronouncement:	24/11/2023	

ORDER

Per Bench:

All these appeals filed by the assessee are directed against the separate orders dated 25/08/2023 of the learned CIT (A)-NFAC, relating to A.Ys.2013-14. Since common issues are involved in all these appeals, therefore, these were heard together and are being disposed of by this common order for the sake of convenience.

2. ITA No.494Hyd/20 filed by the assessee is taken as the lead case and are adjudicated as under.

3. Facts of the case, in brief, are that the assessee is a private limited company and is into the business of

manufacturing of agricultural inputs. The assessee for the financial year 2012-13 filed TDS quarter 2 return on statement under 24Q. Subsequently the assessee carried out corrections on 5.12.2022. The assessee received intimation u/s 154 of the I.T. Act wherein the CPC-TDS charged an amount of Rs.20,000/- towards late filing fee u/s 243E and an amount of Rs.21,600/- charged towards interest u/s 220(2) of the I.T. Act. As per the provisions of section 200A, the clause for charging this power to levy fee u/s 234E is inserted only from 1.6.2015.

4. In appeal, the learned CIT (A) NFAC dismissed the appeal of the assessee by observing as under:

> "*5. The grounds of appeal 1 and 2 raised by the appellant, the submissions and case law relied upon by the appellant have been carefully considered. The intimation u/s. 200A and the rectification order u/s 154 passed-by the ACIT, CPC-TDS have been perused. On perusal of the records, it is seen that the order u/s 200A was passed on 08.12.2013and demand of Rs. 20,000/- was raised. Further the appellant has filed correction statement on 17/09/2016and 01/05/2017. This appeal is filed against the rectification order dated 05/12/2022 and the appellant has filed rectification application on 05/12/2022. As per section 154 (7) the rectification application should be filed within 4 years from the end of the financial year in which the order sought to be amended was passed. Therefore, the rectification application filed by the appellant is barred by limitation. The relevant portion of the section 154(7) is reproduced as under:*
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> *"7) Save as otherwise provided in section 155 or sub-section (4) of section 186 no amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed."*
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> *The appellant has filed the rectification application on 05/12/2022 i.e. after the expiry of four years from the end of the financial year in which the order sought to be amended was passed and this appeal is filed against the rectification order. The original order in which demand was raised was passed on 08/12/2013 hence the rectification application filed by the appellant is barred by limitation. The last correction statement filed by the appellant was on 01/05/2017 so if this correction statement was to be*

amended then also the appellant rectification application is barred by limitation as the time to file the rectification application expires on 31.03.2022. Therefore, the CPC has rightly rejected the rectification application filed by the appellant as it is barred by limitation without adjudicating on merit. Hence, no fault found in the rectification order passed by the CPC. Accordingly, the grounds of appeal 1 and 2 are dismissed."

5. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

1. The order of the learned CIT(A) confirming the order of the AO is erroneous both on facts and in law in so far as it is prejudicial to the assessee.

2. The learned CIT(A) erred in confirming the penalty of levy of late filing fee u/s.234E of Rs.20,000 though there is no such provision to levy the same u/s.200A before 01.06.2015.

3. The learned CIT(A) erred in confirming the penalty by observing that the application filed u/s.154 is barred by limitation. The learned CIT(A) failed to appreciate that CPC has not adjudicated the application filed u/s.154 on the ground of barred by limitation.

(Tax effect – Rs.20,000)

4. Any other ground that may be urged at the time of hearing.

6. The prime contention of the assessee is with respect to chargeability of interest u/s 234E of the I.T. Act prior to 1.6.2015. It was submitted by the learned Counsel for the assessee that the issue is squarely covered in favour of the assessee by the order of the Hon'ble High Courts and Coordinate Benches of the Tribunal.

6. Per contra, the learned DR relied upon the order passed by the learned CIT (A).

7. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. Admittedly, all the A.Ys are prior to 1.6.2015 and therefore, the issue is squarely covered in favour of the assessee by virtue of the decision of the Coordinate Benches of the Tribunal and various High Courts. The Coordinate Bench of the Tribunal in the case of Ochre Media Limited Vs. ITO, Ward (TDS)-2(1) for the A.Y 2013-14 in ITA No.204/Hyd/2023, dated 17.05.2023 has allowed the appeal of the assessee by observing as under:

> *7. We have heard the rival arguments made by both the sides, perused the orders of the AO and Ld.CIT(A)/NFAC. We find the AO in the instant case levied late Fee u/s. 234E and interest thereon totaling to Rs. 2,90,940/-, on the ground that the assessee filed its quarterly TDS returns/statements for second, third and fourth quarters of FY 2012-13 belatedly i.e., after the due date. We find the ld.CIT(A) upheld the action of the AO by relying on various decisions, including the decision of Hon'ble Gujarat High Court in the case of Rajesh Kaurani vs. Union of India reported in 83 taxman.com 137. We find identical issue had come up before the Tribunal in assessee's own case in the immediately subsequent assessment year and the Tribunal vide ITA No.119/ Hyd/2023 order dated 23.03.2023 for AY 2014-15 had allowed the appeal filed by the assessee by observing as under:-*
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> *"7. We have heard the rival submissions and perused the material on record. In the present case, the AO imposed late fees u/s 234E of the Act., where the enabling clause (c) was inserted in the section 200A w.e.f. 01.06.2015 and the same has been confirmed by the Ld. CIT(A) relying on the decision of Hon'ble Gujarat High Court in the case of 'Rajesh Kaurani vs. Union of India. We find that late filing fee u/s 234E of the Act has not rightly been charged in the intimation issued u/s 200A/206CB of the Act while processing the TDS returns/statements as the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. Earlier, there was no enabling provision in the ITA 204/Hyd/2023 Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for a period up to 29.06.2014, no late fee could be levied in the intimation issued u/s 200A of the Act. The details of the TDS deduction and statement filed by the assessee are available on record which were not disputed by the Revenue.*
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> *5. We further find that an identical issue arose before the Co-ordinate Bench of Agra Tribunal in the case of Garrison Engineer (E/M) Vs. JCIT (TDS) (ITA No.128/AGR/2021 dt.22.03.2022), wherein the co-ordinate Bench of the Tribunal had allowed the appeal of the assessee by holding as under :*
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> *5. On similar facts, the same issue has been adjudicated by the Co-ordinated bench ITAT Agra, in the case of 'Sudershan Goyal vs. DCIT (TDS)' in ITA No.*

442/Agra/2017 vide order dtd. 09.04.2018. The relevant part of the order is reproduced as follows:

"3. Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOI', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in 'Rajesh Kaurani' (supra) holds the field.

4. We do not find the view taken by the ld. CIT(A) to be correct in law. As against 'Rajesh Kaurani' (supra), 'Shri Fatehraj Singhvi and Others vs. UOI', 73 com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing 'Rajesh Kaurani' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In 'Shri 'Fatehraj Singhvi and Others' (supra) it has been held, inter alia, as follows:

"22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is ITA 204/Hyd/2023 expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest." 6. In view of the above, respectfully following 'Shri Fatehraj Singhvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

6. In the above view, respectfully following 'Shri Fatehraj Singhvi and Ors' (Supra), and our own finding in the case of 'Sudershan Goyal' (Supra), we accept the grievance of the assessees as genuine. Accordingly, the orders of the CIT(A) are reversed, and the fee so levied under section 234E of the Act is cancelled.

7. In the result, all the appeals are allowed.

6. In view of the above discussions and in view of the support drawn from the decision of Co-ordinate Bench of the Tribunal in the case of Garrison Engineer (E/M) Vs. JCIT (TDS) (supra), we accept the grievance of the assessee as genuine. As such, the order of ld.CIT(A) is annulled and thus, the appeal is allowed in favour of the assessee by cancelling the fee so levied under section 234E of the Act.

7. In the result, the appeal of the assessee is allowed.

8. Since the facts of the instant case are identical to the facts of the case already decided by the Tribunal in assessee's own case for the succeeding assessment year, therefore, respectfully following the same, the grounds raised by the assessee are allowed."

8. Respectfully following the above decision of the Coordinate Bench of the Tribunal, the legal grounds raised by the assessee are allowed.

9. With regard to the remaining five appeals filed by the assessee are concerned, we find the grounds raised by the assessee are identical to the grounds of appeal in ITA No.494/Hyd/2023. We have already decided the issue and the appeal of the assessee has been allowed. Following similar reasonings, the grounds raised by the assessee in the remaining five appeals are also allowed in the light of our decision given in ITA No.494/Hyd/2023. Thus, all the appeals filed by the assessee are allowed.

10. In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the Open Court on 24th November, 2023.

Sd/-	**Sd/-**
(R.K. PANDA) **VICE-PRESIDENT**	**(LALIET KUMAR)** **JUDICIAL MEMBER**

Hyderabad, dated 24th November, 2023.

Vinodan/SPS

Copy to:

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3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order