IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI

Before Dr. B. R. R. Kumar, Accountant Member,

Shri Yogesh Kumar US, Judicial Member

ITA No. 1853/Del/2022 : Asstt. Year: 2013-14

Techmobia Digital Solutions Pvt. Ltd., F-26, Connaught Place, New Delhi-110001	Vs	DCIT, Circle-76(1), New Delhi-110092
(APPELLANT)		(RESPONDENT)
PAN No. AABCC8565A		

Assessee by : Sh. Shailesh Gupta, CA
Revenue by : Sh. Amit Katoch, Sr. DR

Date of Hearing: 02.11.2023		Date of Pronouncement: 18.01.2024

<u>ORDER</u>

<u>Per Dr. B. R. R. Kumar, Accountant Member:</u>

The present appeal has been filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi dated 08.07.2022.

2. Following grounds have been raised by the assessee:

"1. That the learned CIT (Appeals) has erred in law and on facts in sustaining levy of fees of Rs. 7,35,418/- under section 234E of the Act, for alleged default in furnishing TDS statements, which is unjustified and untenable in law and thus, should be deleted as such.

2. That the learned CIT(Appeals) has further failed to appreciate the fact that provisions of section 234E has come into statue w e f 01.06.2015 and the same is not applicable for the impugned assessment years and as such, reliance so placed on the same is misplaced in law.

3. That the learned CIT(Appeals) has ignored the various judgments/ orders filed by the assessee - appellant

wherein it has been held that provisions of section 23 4E has prospective operation and cannot be made applicable for the impugned assessment year.

4. That the learned CIT(Appeals) has further erred in stating that "no demand has been raised in the letter / purported order and therefore it is not appealable order falling under section 246 of the IT Act", whereas, specific demand with regards to levy of fees was raised and as such, the said order was an appealable order and the matter should have been decided on merits by learned CIT(A)."

3. The issue of levy of charge u/s 234E of the Income Tax Act, 1961 stands decided by the order of the Co-ordinate Bench of ITAT in ITA No. 2649/Del/2018, order dated . The facts are similar to the facts of the instant case. The relevant part of the said order is as under:

"3. Before the Ld. CIT (A), the assessee's contention has been that, firstly, each of the sellers were paid less than amount of Rs. 50 lacs in respect of the shares and therefore, provision of section 194IA was not applicable; and secondly, assessee had purchased the property on 6.12.2013 and there are various decisions wherein it has been held that fee u/s 234E is not leviable for the period prior to 1.4.2015. However, Ld. CIT (A) has dismissed the assessee's appeal on the ground that, firstly, property may have been purchased from 8 persons but the consideration paid is Rs. 3,35,00,000/- which for a single sale deed, therefore, assessee was liable to deduct u/s 194IA and once assessee has failed to do so, then charging of interest u/s 201 and 220(2) is justified. As regards the issue of levy fee u/s 234E, he held that the same has been levied on 6.5.2017 which is after 1.4.2015.

4. Before us, Ld. Counsel Shri Rakesh Gupta at the outset submitted that it was brought to the notice of the department that, assessee has paid the tax from her own pocket even though the assessee's contention has been that payment has been made separately to each of the vendors which was below the threshold limit of Rs. 50 lacs, therefore, she was not required to deduct TDS u/s 194IA. From No. 26QB and challan of tax deposited were generated on 5.4.2014 from the electronic system which is evident from the orders passed, which clearly mentions the date of filing of challan cum statement as "5.4.2014". Thus, levy of fee u/s 234E is not applicable at all, because there is no delay in filing of the said statement as the same was filed alongwith the tax deposited. He submitted that, from the plain reading of section 234E, section 200(3) r.w. Rule-31A (4A), fee u/s 234E is leviable only when the statement is not filed as prescribed u/s 200(3), which in turn provides the statement is to be filed after payment of tax to the prescribed authority as per prescribed Rule- 31A(4A). The said Rule provides for filing of 'challan cum statement' within seven days from the date of deduction. Since, challan cum statement has been filed by the assessee on 05.04.2014 after paying the tax as required u/s 200(3), therefore, there was no default so as to warrant levy fee u/s 234E. In other words Rule-31A(4A) merely refers to challan cum statement that means that filing of the statement after the tax stands paid. He submitted that had the filing of the statement was envisaged with reference to the date of deduction, then how could the word 'challan' appear in the said sub Rule. 'Challan' word indicates that tax must stand paid and in fact form 26QB is generated simultaneously with the tax paid challan. He further submitted that the tax has been paid and statement has been filed immediately, thus, there is no loss to the revenue; and even if it is taken that there was delay in filing the statement, then it was at best a technical or venial breach, which

should be ignored as held in the decisions reported at Mahavir AGENCY vs. Income Tax Officer 58 ITD 386 (Ahmadabad), Income Tax Officer vs. Alhusain Constructions (P) Ltd. 68 ITD 390 (Mumbai). The object of introducing section 234E to curb a situation where tax was used to be deducted but statement would not be uploaded by the assessees and such inaction on the part of the assessee would deprive the department to give credit to the person in whose account tax was deducted. In the instant case, tax was paid on 5.4.2014 and statement was filed on 5.4.2014, there could not have been any inconvenience to the department in giving credit to the person concerned. Thus, object behind the levy of fee u/s 234E stood achieved in the present case and for this reason also, there was no reason fee u/s 234E should be levied.

5. On the other hand, Ld. DR submitted that once assessee has not deducted the TDS at the time of purchase, then there was a clear cut default and assessee was also liable for levy of fee u/s 234E read with section 200A. He thus strongly relied upon the order of the Ld. CIT (A).

6. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. At the outset, from the perusal of the rectification order u/s 200A generated by TDS (CPC), it is noticed that the TDS in 26QB mentions date of filing of 'challan cum statement' as 5.4.2014, wherein late filing of 'challan cum statement' u/s 234E has been levied. The assessee had purchased the property on 6.12.2013 i.e., relevant to the assessment year 2014-15. Since assessee had purchased the property from eight sellers and the payment to each of the seller has been made separately for an amount of Rs. 41,87,500/- aggregating to Rs. 3,35,00,000/-, the assessee' contention has been that it was not

required to deduct TDS, because the payments made to each seller was less than the prescribed limit of Rs.50 lacs and therefore, provision of section 194IA was not applicable. The demand has been raised by the department u/s 200 in terms of failure to comply with Section 200A, which deals with the processing of statement of tax deducted at source u/s 200. First of all, sub section 3 of section 200 provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:-

"(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"

6.1 Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A(4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. As stated above, the assessee has duly deposited the tax not at the time of purchase albeit on 5.4.2014 and on the same date, statement has also been filed. The relevant

provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & Ors vs. Union of India reported in (2016) 289 CTR 0602, wherein the lordship had made following observations:-

"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made."

7. Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee had furnished

the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled.

8. Similarly interest u/s 220(2) cannot be levied when fee u/s 234E itself is not leviable. In so far as charging of interest u/s 201(IA), the same cannot be charged as admittedly no order u/s 201(1) has been passed holding the assessee to be "assessee in default" and, therefore, such an interest is also deleted."

4. We have examined the issue and the provision of Section 201, Section 200(3) and Section 234E. Since, the issue is in parity with the issues adjudicated in the above said order, the same ratio applies. Hence, the appeal of the assessee is hereby allowed.

5. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 18/01/2024.

Sd/-	**Sd/-**
(Yogesh Kumar US) **Judicial Member**	**(Dr. B. R. R. Kumar)** **Accountant Member**

Dated: 18/01/2024
Subodh Kumar, Sr. PS
Copy forwarded to:

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

ASSISTANT REGISTRAR