IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No.1013/Coch/2022 : Asst.Year 2014-2015
ITA No.1014/Coch/2022 : Asst.Year 2015-2016

Ceecon Readymix Concrete Private Limited, P.O. Chengalpur Kannampethur Thrissur – 680 312. [PAN : CHNCO2919A]	vs.	The Income Tax Officer TDS Range, Thrissur.
(Appellant)		(Respondent)

Assessee by:	Ms. Divya Ravindran, Advocate
Revenue by:	Smt. J M Jamuna Devi, Sr. DR

Date of Hearing:	25.01.2024
Date of Pronouncement:	29.02.2024

O R D E R

Per Bench

This is a set of two Appeals by the Assessee, agitating the dismissal of it's appeals contesting rectification orders under section 154 read with section 200A of the Income-tax Act, 1961 ("the Act" hereinafter), dated 19.12.2019 and 27.12.2019 for the financial years 2013-2014 and 2014-2015 respectively, by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)] vide his orders of even dated, i.e., 27.10.2022, incorrectly stating the relevant years as assessment years, as also the section under which the orders under appeal before him stand passed (i.e., as u/s. 200A). We highlight this as the same has a bearing on the adjudication.

2. The brief facts of the case, as stated, and as gathered from the record, are that the assessee filed quarterly returns/statements in respect of salary to it's four directors for the last quarter (Q4) of the relevant years in time, i.e., on 14.05.2014 and

15.05.2015 respectively, deducting tax thereon, however, at a flat rate of 10%, i.e., as applicable to professional income u/s.194J, at Rs.1.44 lakh and Rs.1.62 lakh for the two consecutive years respectively. The same were processed u/s. 200A vide Intimations dated 18.12.2017. As, however, the statements were filed in Form 26Q, i.e., as applicable to professional income, as against the correct form, i.e., as applicable to salary income (F/24Q), no credit in respect of the tax deducted was allowed to the deductees. The assessee filed revised statements in F/24Q on 18.12.2019 (FY 2013-14) and 26.12.2019 (FY 2014-15). The same were processed the very next day vide Intimations u/s.154, raising demand u/s.234E at the amount of TDS inasmuch as the said levy, computed with reference to the period of delay, i.e., reckoning it from 16.05.2014 and 16.05.2015 for the two successive years respectively, exceeded the amount of TDS, to which amount the levy as computed in terms of the provision, where exceeding the said amount, is to be capped. Interest u/s. 220(2) was also levied. In appeal, the ld. CIT(A) allowed part relief by directing:

(a) reckoning the delay w.e.f. 01.06.2015, i.e., the date w.e.f. which s. 200A stood amended to include computing late filing fee u/s.234E while processing the return of TDS statement filed u/s.200(3) by insertion of clause (c) in sub-section (1) thereof;

(b) deletion of interest u/s.220(2) inasmuch as no demand had been shown to be raised at any time earlier, and it was only on a delayed payment of demand raised u/s.156 that interest u/s.220(2) could be levied.

Aggrieved, the assessee is in second appeal.

3. The basis of the assessee's case is that tax stands deducted; in fact, in a sum, i.e., Rs.48,000, for both the years, higher than the tax payable on salary income and, accordingly deductible u/s. 192 (Rs.36,000), and paid to the credit of the Central Government, as indeed furnished the tax statement for the relevant quarter, in time. All that had, however, happened was of it being in a different Form, i.e., 26Q, applicable to professional income, w.r.t. which the tax was deducted, was accordingly corrected later by filing F/24Q. The same, a *bona fide* mistake, and that too on the part of the counsel, would not attract levy u/s.234E, even as clarified by the Hon'ble

jurisdictional High Court in *Atnk & K Area Armed Forces Veterans' Canteen v. Dy. CIT* [in WP(C) No.18868/2023, dated 19.10.2023 / copy on record]. The Revenue's case, on the other hand, is that the original statement being admittedly in a wrong Form, the same cannot be said to be in compliance with the law, which is only on the filing the correct statement. Levy u/s. 234E is a fee toward the additional processing cost that is thus caused to be incurred by the Revenue. Besides, the deductees are not able to avail credit for TDS, which is only on the filing the correct Form, and which is what in fact led the assessee to file the same. Further, this is precisely what the law, by subjecting it to a cost in the form of a fee, seeks to discourage and, per contra, promote filing of proper returns in time. *The same is neither interest nor penalty*, for the assessee to plead being excepted in terms of timely payment of tax, or of a reasonable cause in not filing the correct statement in time. It is these levies that the Hon'ble Court in *Atnk & K Area AFVs' Canteen* (supra) directs for being not leviable.

4. We have heard the parties, and perused the material on record.

4.1 We begin by reproducing the relevant provisions of law: *(emphasis, supplied)*

Fee for default in furnishing statements.

234E. (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.

(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.

(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.

Duty of person deducting tax.

200(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted

to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorized by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Provided that the *person may also deliver to the prescribed authority a correction statement* for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source *or a correction statement* has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

(*a*) …(*b*)

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

4.2 The matter, as we see it, has two aspects to it. First, are the facts of the case, and toward which Ms. Ravindran, the ld. counsel for the assessee, has sought to place material on record, not before the Revenue. The second is the issue arising, i.e., in principle. We shall take both these aspects in seriatim. The impugned rectifications are in Form 24Q, originally filed on 02.08.2017, amending it by filing a revised statement on 18.12.2019, processed on 18.08.2017 and 19.12.2019 respectively (for FY 2013-14). The corresponding dates for FY 2014-15 are as under:

Particulars	Date	Processed on
Original	02.08.2017	18.08.2017
First correction	20.12.2019	
Second correction	26.12.2019	27.12.2019

Form 26Q, bearing the tax deduction details in respect of the payment to four Directors, classifying it as professional income, at Rs.4,80,000 for both the years, is on 14.05.2014 and 15.05.2015 for fy. 2013-14 and 2014-15 respectively..

4.3 Fee, for both the years, has been levied w.e.f. 01/6/2015 upto December, 2019. The mistake, as stated, is in filing the statement in F/26Q, and which would, inasmuch as it was, as stated by the ld. CIT(A), not before him, have to be therefore exhibited by bringing the relevant Forms/s, i.e., F/26Q, as well as the fact of it's filing

in time, on his record. That is, in reporting the transaction per a different Form, i.e., F/26Q, instead of F/24Q. Concomitant questions, not addressed, arise: *Whether F/26Q was processed*? *Was fee levied on processing F/24Q in December, 2017*? *Why, then, is the amount, on which fee is charged, different for the two years*?

We, nevertheless, proceed further inasmuch as the same, being on the record of the Revenue, is not an additional evidence and, two, entertain no doubt that Ms. Ravindran, the ld. counsel for the assessee, has stated the facts, which also find mention in the assessee's written submissions, correctly. *The question that therefore arises is if this correction is liable for late filing fee*? Sure, a correction statement is also subject to processing and, further, a fee u/s. 234E, where beyond time. Tax, however, stands already deducted and paid in full in time. No interest, much less penalty, is chargeable. This is precisely what the Hon'ble High Court has clarified in *Atnk & K AFVs' Canteen* (supra); the relevant part of it's decision reading as under:-

> "5. I find substance in the submission of the learned Counsel for the petitioner. It is not in dispute that the petitioner had filed the return *on time*. However, it was not in the correct Form, *and it was revised*. Therefore, when the petitioner had filed the return on time, *there is no question of levying penalty and interest*." (emphasis, ours)

4.4 In our considered view, no late fee u/s. 234E is liable to be levied in the stated facts and circumstances of the case. We are conscious that the Hon'ble Court in *Atnk & K Area AFV's Canteen* (supra) held of non-levy, under similar circumstances, of interest and penalty, which have not been levied in the instant case, which is one of levy of fee, and which, further, is toward additional cost that the Revenue is required to incur in processing multiple statements/returns, and which is also the basis for upholding the constitutionality by the Hon'ble High Courts, including the Hon'ble jurisdictional High Court, of s. 234E of the Act. So, however, the Ho.n'ble Court in *Atnk & K Area AFV's Canteen* (supra), even as it states that there is no question of levying penalty or interest, is conscious of the case at hand as being one of, as in the instant case, levy of late fee u/s. 234E. The decision is to be read in whole and

holistically. So read, we discern that in it's considered view there is no default within the meaning of s. 234E of the Act for any consequential levy to be attracted. What has clearly appealed to the Hon'ble Court, as it does to us, is that no prejudice whatsoever stands caused thus to the Revenue under the circumstances, as indeed to the payee (deductee), by the assessee-deductor. Tax in a higher sum stands deducted and paid to the credit of the Central Government, and in the account of the deductee, in time, also filing the statements with the Revenue in time. The only error that has occurred is of it being in a wrong Form, so that the assessee had to file it in the prescribed form for the deductee to be allowed credit in its respect, *and it is he who therefore suffers on account thereof*, i.e., in view of the delayed credit of tax to him by the Revenue. The doctrine captured by the legal maxim *de minimis*, i.e., that the law does not concern itself with trivia, but with the substance of the matter, would, in our considered view, save the assessee from being subject to fee in not filing the correct form in the first instance in the given facts of the case.

5. The issue in principle gets thus decided in assessee's favour. The same, as afore-noted, is subject to it demonstrating the facts as stated, for which the matter travels to the file of the ld. CIT(A), who shall issue clear findings of fact, admitting the material sought to be placed before him by the assessee. We decide accordingly.

6. In the result, the assessee's appeals are allowed on the afore-said terms.

Order pronounced in the open court on February 29, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: February 29, 2024
Devdas G.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin