

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI**

**SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.2411/Mum/2021
(Assessment Year: 2017-18)**

M/s.Brandmark Solution Pvt. Ltd. **Appellant**
17, Orbit Industrial Premises
Opp. Hometel Hotel
Malad West
Mumbai – 400 064
[PAN: AAECB4498G]

Vs

Ward 12(1)(2)/AO NFAC
CIT Appeals / AO-NFAC
New Delhi **Respondent**

Appearance

For the Appellant/Assessee : Sh. Mahesh Saboo
For the Respondent/Department : Shri Ashok Kumar Ambastha

Date

Conclusion of hearing : 21.03.2024
Pronouncement of order : 27.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal Assessee has challenged the order, dated 23/11/2021, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Order, dated 27/11/2017, passed under Section 200A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The assessee has raised the following grounds of appeals:

"1. On the facts and circumstances of the case and in law, the Assessing Officer/CPC TRACES/Authorities below has erred in levying the late fees/penalty u/s 234E of the I T Act amounting to Rs. 5,41,520/- and particularly when the matter is sub-judice which is wholly wrong and against the provisions of Income Tax Act and rules made thereunder.

2. The appellant craves leave to add, alter, modify and delete all or any of the aforesaid grounds of appeals on or before the hearing.

3. On perusal of the material on record it emerges that it is admitted position that the quarterly statement of tax deducted at source for all the four quarter of the Financial Year 2016-17 relevant to the Assessment Year 2017-18 in Form 24Q and 26Q were filed after delay on 21/11/2017 and 17/11/2017, respectively. Vide order, dated 27/11/2017, fee of INR 5,41,520/- was levied on the Appellant.
4. Being aggrieved, the Appellant filed appeal before the CIT(A) after a delay of about 2 years and 7 months. The CIT(A) declined to condone the delay holding that the Appellant had failed to provide any satisfactory reasons. However, thereafter, the CIT(A) proceeded to decide the issue on merits against the Appellant. Thus, the CIT(A) dismissed the appeal vide order, dated 23/11/2021.
5. Being aggrieved, the Appellant is now in appeal before the Tribunal
6. We have considered the rival oral/written submission and perused the material on record.
7. During the course of hearing the Appellant had submitted that the issue pertaining to constitutional validity of the provisions contained in Section 234E of the Act was pending adjudication before the Hon'ble Supreme Court in the case of Rashmikant Kundalia & Ors Vs. UOI: [Civil Appeal No. 122/201]; and that the Appellant has filed intervention application in the same. However,

it is not the case of the Appellant that there is stay on the operation of the judgment, dated 09/02/2015 passed by the Hon'ble Bombay High Court in Writ Petition No.771/2014 whereby the constitutional validity of provisions of Section 234E of the Act was upheld. Accordingly, we proceeded to adjudicate the issue raised in the present appeal.

8. A copy of order, dated 29/07/2022, passed by the Tribunal in the case of the Appellant in appeals pertaining to Assessment Years 2014-15 and 2015-16 [ITA No. 2409 & 2410/Mum/2021] was placed on record by both the sides during the course of hearing. On perusal of the same we find that in identical facts and circumstances, appeal for the Assessment Year 2014-15 and 2015-16 were also filed before the CIT(A) after delay. In those appeals also the CIT(A) declined to condone the delay of around 3 years and 6 months in filing the appeal. However, the Tribunal took into consideration the affidavit filed by the director of the Appellant company wherein it was stated that the Appellant got knowledge of the order levying fee under Section 234E of the Act on 25/06/2020 after coming across the demand notice on TRACES since the physical copy of the order was not served upon the Appellant. The Tribunal also took note of the fact that the accountant who was looking after the TDS related matters had left the job without uploading the statement of tax deducted at source. Taking into account the aforesaid the Tribunal concluded that the CIT(A) was not correct in dismissing the appeal as being barred by limitation. Since appeal for the Assessment Year 2017-18 came to be filed before the CIT(A) in the same facts and circumstances, respectfully following the decision of the Tribunal in the case of the Assessee for the Assessment Year 2014-15 and 2015-16 [ITA No. 2409 & 2410/Mum/2021, dated 29/07/2022], we hold that the CIT(A) was not correct in dismissing the appeal

as being barred by limitation and therefore, we overturn the order, dated 23/11/2021, passed by the CIT(A) to the extent it rejects the application seeking condonation of delay of 2 years and 6 months in filing appeal before the CIT(A) and dismiss the appeal filed before the CIT(A) as being barred by limitation.

9. As regards, the merits of the demand raised on the Appellant under Section 234E of the Act, we note that vide order, dated 29/07/2022, passed by the Tribunal in the case of the Appellant in appeals pertaining to Assessment Years 2014-15 and 2015-16 [ITA No. 2409 & 2410/Mum/2021] pertaining to Assessment Year 2014-15 & 2015-16, the Tribunal has deleted the fee levied under Section 234E of the Act holding that fee under Section 234E of the Act could have been charged only after 01/06/2015 and not for the period prior to 01/06/2015. In the present case it is admitted position that the period(s) for which statement of tax deducted at source has been filed belatedly and fee under Section 234E has been charged fall after 01/06/2015. Thus, we do not find any infirmity in the orders passed by the Assessing Officer levying fee under Section 234E of the Act. Accordingly, Ground No. 1& 2 raised in the present appeal are dismissed.

In result the present appeal by the Assessee is dismissed

Order pronounced on 27.03.2024.

Sd/-
(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai; Dated 27.03.2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai