

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI**

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.304 to 309/Del/2024
(ASSESSMENT YEAR 2013-14)**

**ITA No.310 to 315/Del/2024
(ASSESSMENT YEAR 2014-15)**

**ITA No.316 to 319/Del/2024
(ASSESSMENT YEAR 2015-16)**

Rajdeep Leasing and Finance (Delhi) Pvt. Ltd. C/o Vinod Kumar Bindal & Co. Chartered Accountants Shiv Sushil Bhawan D-219, Vivek Vihar Phase-I, New Delhi-110095 PAN-AAACR1485K	Vs.	Income Tax Officer Ward-21(1) New Delhi
(Appellant)		(Respondent)

Assessee by	Shri Vinod Bindal, CA & Ms. Rinky Sharma, ITP
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	15/05/2024
Date of Pronouncement	22/05/2024

ORDER**PER S.RIFAUR RAHMAN, AM:**

1. All these 16 appeals have been filed by the Assessee against the orders of Learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi [“Ld. CIT(A)”, for short], dated 06/11/2023 for Assessment Years 2013-14, 2014-15 & 2015-16 respectively.

2. All the above appeals are interconnected having common and similar issues. All these appeals are heard together and disposed off by this common order. We are taking ITA No.319/Del/2024 for Assessment Year 2015-16 as a lead case.

3. The assessee has raised the following grounds of appeal in ITA No.319/Del/2024 for Assessment Year 2015-16:

“1. The learned CIT(A) erred in rejecting the appeal on the ground that appeal is time barred.

2. The learned CIT(A) failed to appreciate and note that when AO had not communicated any decision on the application filed u/s 154 of the Act against charging of the fee u/s 234E, then the date of letter “intimation of outstanding demand” i.e. 17/05/2023 is the date on which order u/s 154 denying the relief was communicated to appellant.

3. The learned CIT(A) erred in considering the application as time barred when order passed u/s 154 of the Act on 10/05/2024 was communicated only on 17/05/2023.

4. *The learned CIT(A) erred in not deleting the fee u/s 234E of the Act which was levied illegally.*

5. *The appellant craves the leave to add, substitute, modify delete or amend all or any ground of appeal either before or at the time of hearing."*

4. From the above grounds of appeal, the short issue that needs to be adjudicated by us is, whether or not the authorities below are justified in levying late filing fees under section 234E of the Income Tax Act, 1961 (for short "*the Act*").

5. The brief facts of the case are, the assessee had filed its quarterly return which required to be filed u/s 200 of the Income Tax Act, 1961 ('the Act' for shot) were actually filed after respective due dates. As per the statement of the assessee delay in filing the quarterly return/statements was due to clerical misappropriation of introduction of the law and frequent changes etc. The e-Form 26/27Q was substituted in the Rules w.e.f 19/02/2013 where the earlier form was introduced w.e.f 01/04/2009. Further, it was submitted that the enabling provision for the purpose by way of clause (c) to the section 200A(1) of the Act was inserted in the statute w.e.f 01.06.2015 and this provision was not at all retrospective. It was submitted that the fees leviable u/s 234E of

the Act in respect of default for the period after 01/06/2015 i.e. prospectively applicable. The assessee has filed 154 application before CPC against the above said demands and assessee has not filed any of the 154 order or the demand raised by the CPC before the Ld. CIT(A) and Ld. CIT(A) referring to the above defects in filing the appeal, he has rejected the submissions of the assessee and it was pointed out by the Ld. CIT(A) that assessee has not filed the appeal against the order u/s 200A(1) of the Act, which was appealable order, however, assessee has preferred to file the appeal against 154 order without filing the copy of the same and Ld. CIT(A) also observed that there is a considerable delay in filing the present appeal without indicating the reasons for delay as well as the reasons for filing the quarterly return which with delay. Accordingly, the Ld. CIT(A) refused to condone such huge delay in filing the present appeal and not decided the issue on merit.

6. Aggrieved with the above order, the assessee is in appeal before us raising above grounds of appeal.

7. At the time of hearing, the Ld. AR submitted before us that the issue raised in this appeal is covered by various judicial precedents

issued by the Tribunal holding that there is no enabling provision under section 200A of the Act to determine fee under section 234E of the Act prior to 1st June 2016 and, therefore, the assessee prays for deletion of demand towards late fee and penalty pertaining to Assessment Year 2015–16. He further submitted that the Assessing Officer had not communicated any decision on the application filed u/s 154 of the Act against charging to fees u/s 234E. He stated that the intimation of outstanding demand i.e. On 17/05/2023 is the date on which intimation u/s 54 denying the relief was communicated to the assessee. He prayed that the assessee came to know about the demand only on such intimation and it is fact on record that there is a demand still pending in the IT portal.

8. The Learned Departmental Representative relied upon the observations of the Assessing Officer and the Learned Commissioner (Appeals).

9. Considered the rival contention and perused the material on record. The issue that needs to be addressed here is, whether or not the Assessing Officer could charge late fee under provisions of

section 234E of the Act, where admittedly quarterly TDS returns filed by assessee were delayed. Identical issue arose before the Co-ordinate Bench of the Tribunal, Mumbai “E” Bench, Mumbai, in a group of cases being ITA no.4406/Mum./2017, etc., vide order dated 28th August 2019, Emsons Exim Pvt. Ltd. v/s ITO (TDS), wherein the Co-ordinate Bench followed the majority view expressed by the Third Member by observing that the fee under section 234E of the Act can only be charged in respect of delay in filing the statement of TDS for the period after 1st June 2015. Although, the fact remains that the assessee is defaulted in filing the TDS return belatedly prior to 1st June 2015. Since the issue raised in the present case is squarely covered by the aforesaid ratio laid down by the Co-ordinate Bench of ITA, Mumbai. Respectfully following the same, we hold that the authorities below were not justified in levying penalty and the interest thereon. Since the default committed by the assessee is i.e., prior to 1st June 2015, the Assessing Officer is not empowered to charge fees under section 234E of the Act by way of intimation issued under section 200A of the Act. Similarly, the Co-ordinate Bench of this Tribunal also

taken similar view in the case of ICMC Project Pvt. Ltd. in ITA No.1361 to 1374/Del/2021. Even though the assessee has filed the present appeal with delay and Ld. CIT(A) has refused to condone the delay, however, the delay cause to the assessee may have various reasons, however, it is fact on record that the levy was levied prior to 01/06/2015 and there was no mechanism but levy such fees at that point of time, therefore, the delay can be condoned at this stage and the case was allowed on merits. Accordingly, appeal filed by the assessee is allowed.

10. Since, the facts in this appeal are exactly similar to the facts in other appeals filed by the assessee i.e. ITA No.304 to 318/Del/2024 and the decision taken in ITA No.319/Del/2024 are applied *mutatis mutandis* in all the above appeals. Accordingly, the issue involved in all these appeals are similar and 234E was levied prior to 01/06/2015. Accordingly, all these appeals are decided in the favour of the assessee.

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

Order pronounced in the open court on 22nd May, 2024

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 22/05/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI