

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.149/Nag./2024
(Assessment Year : 2013-14)

Sanjay Gandhi Smruti Vidya Mandir
Hinganghat, Wardha 442 301
PAN – NGPS05056C

..... Appellant

v/s

Central Processing Centre (TDS)
Ghaziabad

..... Respondent

Assessee by : Ms. Alfiya Rozie
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 15/05/2024

Date of Order – 15/05/2024

ORDER

PER K.M. ROY, A.M.

The instant appeal has been filed by the assessee challenging the impugned order dated 30/03/2022, passed by the learned Commissioner of Income Tax (Appeals), Delhi, [*learned CIT(A)*], for the assessment year 2013-14.

2. In its appeal, the assessee has raised following grounds:-

"1. Whether on the facts and circumstances of the case, learned Commissioner of Income Tax - (Appeals) was justified in affirming the late filing levy of tax on the appellant by the DCIT, CPC-TDS.

2. The appellant craves leave to add or alter any other ground that may be taken at the time of hearing of this case."

3. The only issue involved in all these appeals is, whether the Assessing Officer can levy late fee prescribed under section 234E of the

Act, when the quarterly return filed by the tax deductor for the period prior to 1st June 2015, particularly when the law has been amended by Finance Act, 2015 w.e.f. 1st June 2015, enabling the Assessing Officer to compute the late fee while processing TDS return under section 200A of the Act under sub-clause (c) of sub-section 1. There is a delay of 94 days in filing appeal before us. The appellant had placed an affidavit explaining the causes of delay. Being satisfied with the sufficient reasons, we condone the same and proceed for adjudication.

4. The appellant deductor filed Form No.24Q on 11/12/2014, for the Fourth Quarter (Q4) ending 31/03/2013, as against the due date 15/05/2013, with the delay of 575 days. The E-TDS statement filed by the appellant was processed and an intimation u/s 234E r w s 200A was sent by raising a demand of ₹ 51,000, towards the late fee calculated at the rate of ₹ 200 per day for filing of E-TDS statement. The appellant filed a rectification application under section 154 of the Act before the CPC-TDS, Ghaziabad, for deletion of late fees levied under section 234E on 31/01/2020, against the above intimation. The rectification application was processed by the Assessing Officer, Central Processing Centre, and an order under section 154 was passed vide its order dated 22/12/2020, wherein the request of the appellant was rejected. Aggrieved by this order under section 154, the appellant has filed appeal before the first appellate authority.

5. The learned CIT(A) dismissed the assessee's appeal by relying upon certain judicial pronouncements viz., the judgment of the Hon'ble Bombay High Court in Rashmikant Kundalia v/s Union of India, [2015] 54 taxmann.com 200 (Bom.) wherein it has been ruled that provisions of section 234E of the Act is constitutionally valid. Similar view has also been taken by the Hon'ble Madras High Court in Quatalys Software Technologies Pvt. Ltd. The appellant has then knocked the doors of justice before us.

6. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that similar issue has been decided by the this same very Bench in Bank of India, Panchgaon Branch, etc. v/s ITO (TDS), in ITA No.93-95/Nag./2023, vide order dated 01/05/2024, wherein the Tribunal has decided the very same issue in favour of the assessee. The findings are reproduced below for ready reference:-

"7. We have heard the arguments of the rival parties, perused the material available on record and gone through the orders of the authorities below. In the present case, the Assessing Officer has levied late fee under section 234E of the Act for the assessment year 2013-14 and 2014-15. The amendment to the provisions of section 200A of the Act came into effect from 1st June 2015. The Co-ordinate Bench of the Tribunal, Chennai Bench, Chennai, in S.S.S. Construction (supra) has considered this issue by following the judgment of the Hon'ble Karnataka High Court in Fatehraj Singhvi v/s Union of India, [2016] 289 CTR 602 (Kar.) and also considered the judgment of the Hon'ble High Court in Olari Little Flower Kuries Pvt. Ltd. v/s Union of India, [2022] 134 taxmann.com 111 (Ker.) holding that the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated returned filed for the period prior to 1st June 2015 is invalid. Relevant portion, vide Para-4 of the order dated 22/04/2022 (supra), is extracted below:-

"4. None appeared for the assessee. We have heard learned DR and perused orders of the authorities below. We find that the learned CIT(A) has disposed off appeals filed by the assessee on technical grounds without condoning delay in

filing appeals, although, the assessee has filed petition for ITA No. 3495 to 3504/Chny/2019 condonation of delay. We find that the issue involved in the present appeals filed by the assessee is on levy of late fee u/s.234E of the Act, for belated filing of quarterly TDS returns beyond prescribed date and this issue is covered by various decisions of the Tribunal and High Courts, including decision of the co-ordinate Bench of ITAT., Chennai. The Tribunal in the case of M/s. M.F. Textiles Pvt.Ltd. Vs. ACIT in ITA Nos. 578 & 579/Chny/2021 dated 24.02.2022 had considered an identical issue in light of provisions of section 234E of the Act and also amendment to section 200A by Finance Act, 2015 w.e.f. 01.06.2015 and held that in absence of enabling provision u/s.200A of the Act, the Assessing Officer cannot levy late fee u/s.234E of the Act for belated filing of quarterly TDS return for period prior to 01.06.2015. The relevant findings of the Tribunal in ITA Nos.578 & 579/Chny/2021 dated 24.02.2022 are reproduced as under:-

" 5. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The solitary issue that needs to be resolved in the given facts and circumstances of the case is whether the Assessing Officer can levy late fee prescribed under section 234E of the Act, when the quarterly return filed by the tax deductor for the period prior to 01.06.2015, when the law has been amended by Finance Act enabling the Assessing Officer to compute late fee while processing TDS returns under section 200A of the Act.

ITA No. 3495 to 3504/Chny/2019 The provisions of section 234E of the Act has been inserted to the statute by Finance Act with effect from 01.07.2012 and provides levy of late fee for belated filing of quarterly return filed by the tax deductor. The Assessing Officer started levying of late fee under section 234E of the Income Tax Act, 1961 while processing quarterly TDS return and started issuing intimation to the assessee. The issue has been challenged before various Courts by the assessee by writ and challenged the validity of provision of section 234E of the Act. In some cases, some Courts have granted stay of operation of intimation issued by the Department under section 200A of the Act. Therefore, on the basis of judgement of the Hon'ble High Court, the assessee have started challenging the intimation issued by the Assessing Officer before the Id. CIT(A). The Id. CIT(A) did not entertain the appeal filed by the assessee on both counts, including on limitation in filing the appeal as well as on merits of the issue and rejected the arguments taken by the assessee and confirmed late fee levied under section 234E of the Income Tax Act, as per mandate of the statute. In the meantime, the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) had considered the issue and after analyzing the provisions of section 234E of the Act and section 200A of the Act and held that in the absence of enabling provision in section 200A of the Act, the Assessing Officer cannot levy late fee under section 234E of the Act, while processing the quarterly TDS return filed for the period of the respective assessment years prior to 01.06.2015. A similar view has been expressed by the Hon'ble Kerala High Court in the case of Olari Little Flower Kuries (P.) Ltd. v. Union of India [2022] 134 taxmann.com 111 (Kerala) after considering the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) and held that the provisions of section 200A of the Act were mandated to enable computation of late fee payable under section 234E of the Act, at the time of processing of quarterly TDS return and the said amendment came into effect from 01.06.2015. Thus, the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated return for the period prior to 01.06.2015 is invalid. Subsequent to the decisions of the Hon'ble Karnataka High Court and the Hon'ble Kerala High Court, series of decisions have been rendered by various Benches of the Tribunal and held that late ITA No. 3495 to 3504/Chny/2019 fee under section 234E of the Act cannot be levied for the period prior to 01.06.2015, because, there was no enabling provision to levy such late fee.

6. In the present appeals, on perusal of the facts, we find that the assessment years involved are prior to 01.06.2015. Therefore, we are of the considered view that the late fee charged by the Assessing Officer under section 234E of the Act, while processing quarterly TDS return under section 200A of the Act, is without any authority and invalid. Hence, by respectfully following the decision of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka), we are of the considered view that the Assessing Officer cannot levy late fee while processing of TDS return under section 200A of the Act upto the financial year 2014-15. Since, late fee charged in the present case pertaining to the financial year 2013-14, we direct the Assessing Officer to delete the late fee charged under section 234E of the Act in the intimation issued under section 200A of the Act for the processing of quarterly TDS return filed by the assessee.

7. In the result, both these appeals filed by the assessee are allowed."

8. We find that the above decision of the Co-ordinate Bench in S.S.S. Construction (supra) is squarely applies to the assessee's case. Apart from this, the issue is also decided by the Co-ordinate Bench of the Tribunal, Nagpur Bench, in assessee's own case in Bank of India v/s ACIT, ITA no.104/Nag./2022, etc., order dated 06/06/2022, wherein the Tribunal, Nagpur Bench, Nagpur, has decided the very same issue in favour of the assessee. In view of the above, we are of the opinion that the impugned orders passed by the learned CIT(A) for all the assessment years under consideration deserve to be reversed.

9. Insofar as the arguments of the learned D.R. in case of DIGP Group Centre CRPF (supra) is concerned, we find that it relates to the assessment year 2016-17, 2017-18, 2018-19 and 2019-20, whereas, the present appeal relates to the assessment year 2013-14 and 2014-15 and hence, the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, Nagpur, relied upon by the learned D.R. has no application to the facts of the present case for the assessment year under consideration and thus the arguments of the learned D.R. is rejected. Consequently, the impugned orders passed by the learned CIT(A) for all the years under consideration are hereby reversed and the grounds raised by the assessee in this appeal are allowed."

7. Since the issue before us is identical, consistent with the view taken in the aforesaid case, we set aside the impugned order passed by the learned CIT(A) by allowing the grounds raised by the assessee.

8. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 15/05/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 15/05/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur