

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.351/Bang/2024
Assessment year : 2013-14

Sreenidhi Shelters, No.429/31, 7 <sup>th</sup> B Main, 4 <sup>th</sup> Block, Jayanagar, Bangalore – 560 011. <b>PAN : AAZFS 6916J</b>	Vs.	The Income Tax Officer, TDS Ward 3(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sanjay Chikkamath, CA
Respondent by	:	Shri Subramanian, S. Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	26.06.2024
Date of Pronouncement	:	28.06.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 22.12.2023 of the Addl./Jt.CIT(Appeals)-5, Mumbai, for the AY 2013-14.

2. At the outset, the appeal is time barred by 9 days and it is explained by the assessee by affidavit dated 28.02.2024 that the delay is due to uncertain business hassles and when the legal consultant advised to file appeal before the ITAT for relief it was already time

barred, however the appeal was filed on 29.02.2024. There is no intention to jeopardize the interest of the revenue by delaying the filing of appeal.

3. After hearing both the parties, it is observed that there are sufficient reasons for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. The sole and substantive issue raised by the assessee is the levy of late fee u/s. 234E of the Act of Rs.2,02,514. Briefly stated the assessee is a partnership firm engaged in the business of site preparation work. It filed quarterly TDS return in Form 26Q4 for FY 2012-13 on 04.08.2015 which was due to be filed on 15.05.2013. As per intimation u/s. 154 by the CPC demand is raised for Rs.2,77,500, out of which the assessee has challenged the demand of Rs.2,02,540 before the CIT(Appeals). The ld. CIT(A) relied on the judgment of Hon'ble Madras High Court in the case of Conceria International P. Ltd. (2023) 157 taxmann.com 335 (Madras) and held that the provisions of section 234E are applicable to defaults committed of late filing of TDS statement u/s. 200(3) from 01.07.2012. He dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the ITAT.

5. The ld. AR submitted that the ld. CIT(A) is not justified in confirming the levy of late fee of Rs.2,02,540 pertaining to 4<sup>th</sup> quarter

relevant to FY 2012-13 u/s. 234E of the Act without appreciating the law and facts of the case. He failed to consider the Hon'ble Delhi High Court judgment in the case of Raj Veer Singh v. ACIT in which it has been held that prior to 01.06.2015 there was no enabling provision for raising a demand in respect of levy of late fee u/s. 234E and the amendment is only prospective in nature. The provisions of section 200A(1)(c)(d)&(f) have come into force only w.e.f. 01.06.2015 and hence there was no authority to determine and levy the fee u/s. 234E prior to 01.06.2015 and the intimation u/s. 200A by AO making demand of levy fee u/s. 234E is illegal, invalid and unenforceable in law. He also submitted that the jurisdictional High Court has also decided this issue in favour of assessee in the case of Fatehraj Singhvi & Ors. 2016 (9) TMI 964 (Kar. HC).

6. The ld. DR relied on the order of lower authorities and submitted that the Hon'ble Madras High Court has decided this issue in favour of revenue and the ld. CIT(Appeals) has relied on the same. Therefore the order of the CIT(A) should be confirmed.

7. Considering the rival submissions, we note that the levy for late fee charged by the CPC u/s. 234E of the Act is relating to 4<sup>th</sup> Quarter for FY 2012-13 is Rs.1,62,200 and the ld. CIT(Appeals) has confirmed the same by following the judgment of Hon'ble Madras High Court in the case of Conceria International P. Ltd. (supra). However the assessee has raised the issue regarding Rs.2,02,540 which is best known to the assessee.

8. The enabling clause (c) was inserted in section 200A w.e.f. 01.06.2015. We understand that earlier there was no enabling provision u/s. 200A of the Act for raising demand in respect of levy of late fee, as such in respect of TDS statement filed for the period prior to 01.06.2015, no late fee could be levied in the intimation u/s. 200A of the Act.

9. On similar facts, the jurisdictional High Court in the case of Fatehraj Singhvi & Ors. (2016) 73 taxmann.com 252 (Kar) has held as under:-

“ 27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.”

10. The Id. CIT(Appeals) has followed the judgment of the Hon'ble Madras High Court in the case of Conceria International P. Ltd. (supra), however, we are bound to follow the above judgment of the jurisdictional High Court and respectfully following the same, we hold

that the late fee 234E cannot be levied in the case of the assessee as raised by the TDS CPC.

11. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 28<sup>th</sup> day of June, 2024.

Sd/-  
( SOUNRARAJAN K.)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 28<sup>th</sup> June, 2024.

*/Desai S Murthy /*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.