

आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI

माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI ABY T. VARKEY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपील सं./ ITA No.2001/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2013-14)

&

2. आयकरअपील सं./ ITA No.2002/Chny/2024
(निर्धारण वर्ष / Assessment Year: 2014-15)

Ramnagar Suburban Society #101, Rajaji Road, Ramnagar, Coimbatore-641 009.	बनाम/ Vs.	ITO TDS Ward-2 Coimbatore.
स्थायी लेखासं./जीआइआरसं./PAN/TAN No. AAATT-1481-A / CMBTO-3008-F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Saroj Kumar Parida (Advocate) – Ld.AR
प्रत्यर्थीकीओरसे/Respondent by	:	Ms. R. Anita (Addl.CIT) -Ld. Sr. DR

सुनवाईकीतारीख/Date of Hearing	:	24-09-2024
घोषणाकीतारीख /Date of Pronouncement	:	09-10-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The sole grievance of the assessee in the captioned appeals is confirmation of levy of fees u/s. 234E for late filing of quarterly TDS returns. The aforesaid fees have been levied for AYs 2013-14 & 2014-15 for late filing of TDS returns. Since the assessee did not file order issued u/s 200A, the appeal was held to be deficient by Ld. first appellate authority. Aggrieved, the assessee is in further appeal before us.

2. The Ld. AR has referred to the decision of Hon'ble Single Judge of High Court of Madras in the case of **M/s True Blue Voice India Pvt. Ltd. & Ors. (WP Nos.2700 & 2703 of 2022 dated 09-10-2023)**. The Hon'ble Court, in para-17, held that Sec.200A(1)(c) was not introduced during the AYs 2012-13, 2013-14 & 2014-15. In the absence of any such provisions prevailing at the time of processing of TDS return, no late fees u/s 234E could be levied.

3. However, another decision of Hon'ble Single judge of Hon'ble High Court of Madras in the case of **Conceria International (P.) Ltd. (157 Taxmann.com 335; dated 10-11-2023)** has been brought on record which has taken a view against the assessee.

4. After going through both the orders, we find that the subsequent decision in the case of **Conceria International (P.) Ltd. (157 Taxmann.com 335; dated 10-11-2023)** has considered all the relevant contrary case laws holding the field. These include the decision of Hon'ble High Court of Karnataka in the case of **Fatheraj Singhvi vs. Union of India (73 Taxmann.com 252)** and also the contrary decision of Hon'ble Gujarat High Court in the case of **Rajesh Kourani vs. UOI (83 Taxmann.com 137)**. After elaborate discussion and upon due consideration of various case laws, it was held by the Court as under: -

7.1. A reading of the above provision would show that liability to pay, by way of fee gets attracted under sub-section (1) to section 234E of the Act once 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 of the Act and the liability shall continue for every day during which the failure continues. Sub-section (3) to Section 234E of the Act provides that the fee referred to in sub-section (1) to section 234E of the Act 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. In other words, sub-section (3) provides for self assessment/payment of fee payable under sub-section (1) to section 234E of the Act. Importantly, sub-section(4) to section 234E of the Act provides that the above provisions would apply to statement referred to in sub-section (3) to section 200 of the Act which is to delivered or cause to delivered on or after 1-7-2012.

7.2. With the above overview of section 234E of the Act and on considering both the above views, it appears to me that the opinion expressed by the Gujarat High Court that section 234E of the Act by itself creates a liability and the liability to pay the late fee is not dependent on section 200A(1)(c) of the Act which only prescribes the recovery mechanism reflects the true intent and purpose of section 234E of the Act. Section 234E of the Act which provides for late fee is the substantive provision and the levy is not dependent on section 200A(1)(c) of the Act which only prescribes a recovery mechanism. A reading of section 234E of the Act would make it clear that it gets attracted, the moment there is a failure on the part of a person 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 of the Act. The person committing the above breach/infracton renders himself liable to pay by way of fee a sum of Rs. 200 everyday during which the failure continues. Sub-section(3) in fact provides for a self assessment/payment of the fee while delivering or causing to deliver a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. Sub-section (4) to section 234E of the Act also makes it clear that the above provision would be effective from 1-7-2012. Therefore the submission that 234E of the Act would not be operable/effective unless and until section 200A(1)(c) was introduced overlooks the fact that section 234E (1) of the Act is the substantive provision and section 234E(3) of the Act provides for a self declaration/payment for the delay in complying with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. With due respect I am unable to subscribe to the view expressed by the Karnataka High Court in view of the reasons stated *supra*.

7.3. In the light of the above discussion challenge to the order dated 26-2-2021 imposing the levy of late fee prior to 1-6-2015 stands rejected.

5. The Hon'ble Court concurred that Section 234E of the Act is the substantive provision and its levy is not dependent on Section 200A(1)(c) of the Act which only prescribes a recovery mechanism. A reading of Section 234E of the Act would make it clear that it gets attracted, the moment there is a failure on the part of a person to deliver the quarterly TDS statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. The person committing the above breach / infracton renders himself liable to pay by way of fee a sum of Rs.200/- for everyday during which the failure continues. Sub-section (3) in fact provides for a self assessment / payment of the fee while delivering or causing to deliver a statement in accordance with sub-section (3) of section 200 or the proviso to sub-

section (3) of section 206C of the Act. Sub-section (4) to section 234E of the Act also makes it clear that the above provision would be effective from 01-07-2012. Therefore, the submission that 234E of the Act would not be operable/effective unless and until Section 200A(1)(c) was introduced overlooks the fact that Section 234E (1) of the Act is the substantive provision.

6. Per Contra, the earlier decision in **M/s True Blue Voice India Pvt. Ltd. & Ors. (supra)** has not considered the ratio of contrary decisions of Hon'ble High Court of Karnataka in the case of **Fatheraj Singhvi vs. Union of India (73 Taxmann.com 252)** vis-à-vis the contrary decision of Hon'ble Gujarat High Court in the case of **Rajesh Kourani vs. UOI (83 Taxmann.com 137)** though the decision of **Rajesh Kourani (supra)** was cited by revenue which is evident from Para-8 of the decision.

7. Considering the above stated factual position and respectfully following the subsequent and elaborate decision in **Conceria International (P.) Ltd. (supra)**, the levy of fees u/s 234E for AYs 2013-14 & 2014-15 could not be faulted with.

8. Both the appeals stand dismissed.

Order pronounced on 9th October, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER
चेन्नई Chennai; दिनांक Dated :09-10-2024
DS

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT Coimbatore.
4. विभागीयप्रतिनिधि/DR

5. गार्डफाईल/GF