

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B” DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

Sl. No	ITA/CO No(s)	Asst. Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	ITA No.634 /Del/2024	2013-14 (Q-4 TDS Statement in Form 26Q)	Dream Design and Display India Pvt. Ltd. 26D, Sector-31, Site IV, Kasana Industrial Area, Greater Noida, UP-08 PAN : AACCD 3197 J	DCIT/TDS/CPC New Delhi
2.	ITA No.635/Del/2024	2013-14 (26Q, Q3)	-do-	DCIT/TDS/CPC Ghaziabad
3.	ITA No.636/Del/2024	2013-14 (24Q, Q4)	-do-	DCIT Circle – 7(1) New Delhi
4.	ITA No.637/Del/2024	2013-14 (24Q, Q3)	-do-	-do-
5.	ITA No.638/Del/2024	2013-14 (24Q, Q2)	-do-	-do-
6.	ITA No.639/Del/2024	-do-	-do-	-do-

Appellant by:	Written Submissions		
Respondent by:	Shri Narpal Singh, Sr. D.R.		
Date of hearing:	09	10	2024
Date of pronouncement:	11	10	2024

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

All the six captioned appeals of the Assessee concern imposition of demand under Section 234E of the Act. The requisite detail of the assessment under challenge is tabulated hereunder:

ITA Nos.	Name of assessee	FY	CIT(A) order dated	AO's order dated	AO's order under Section
ITA No.634 /Del/2024	Dream Design and Display India Pvt. Ltd.	2012-13	15.12.2023	29.05.2014	200A/206CB
ITA No.635/Del/2024	-do-	-do-	-do-	-do-	-do-
ITA No.636/Del/2024	-do-	-do-	-do-	-do-	-do-
ITA No.637/Del/2024	-do-	-do-	-do-	-do-	-do-
ITA No.638/Del/2024	-do-	-do-	-do-	-do-	-do-
ITA No.639/Del/2024	-do-	-do-	-do-	-do-	-do-

2. When the matter was called for hearing, none appeared for the assessee. Accordingly, the matter was proceeded *ex-parte*.

3. We have heard the submissions made on behalf of the Revenue and perused the impugned order of CIT(A) under challenge.

4. As per the grounds of appeal, the assessee seeks to challenge the action of the Revenue and contends that late fee levied on the assessee under Section 234E for delay filing statements of tax deduction at source under s. 200/206C read with S. 200A/206CB of the Act by the deductor/collector assessee is *void ab initio* in the light of the judicial precedents.

5. On perusal of the first appellate order, it is noticed that the late filing fee under Section 234E has been imposed for default committed by the deductor assessee towards delay in filing quarterly TDS returns showing statement of various payments made to payees/or collected from payee in each quarter and TDS deducted thereon .

5.1 As per S. 200 or 206C of the Act as the case may be, the

verified statement setting forth requisite transactions of deduction / collection of tax at source is required to be filed within the stipulated time frame prescribed in this regard.

5.2 In the present appeals, TDS statement has been admittedly filed belatedly beyond the time limit prescribed under section 200(3) or 206C(3) as the case may be. The CPC while processing the TDS statement issued intimation / order to the assessee under Section 200A of the Act and levied late fees of different amounts computed with reference to section 234E of the Act.

5.3 The assessee challenged the action of the Assessing Officer before the CIT(A) and contended that the demand by way of late fee under Section 234E can be raised only by virtue of amendment carried out in S. 200A by Finance Act 2015 w.e.f 1.6.2015 and prior to amendment, S. 200A of the Act does bear any reference to fee computed under S. 234E. The assessee contends that the amendment seeking to levy fee under S. 234E is penal in nature and would thus apply prospectively for the quarters ending after 1.6.2015 and not to earlier quarters. As a corollary, in cases of default committed towards belated filing of Quarterly statement prior to 01.06.2015, the extant law envisaged in S. 200A does not extend to trigger Section 234E to enable the AO to impose the impugned demand. On facts, the alleged default as stated in all the instant appeals relates to period prior to 01.06.2015 and therefore the action of the Assessing Officer to impose late filing fee under Section 234E while processing statement under S. 200A is without sanction of law.

5.4 The CIT(A), however, dismissed the captioned appeals on the ground that the appeal filed before him are belated for which no sufficient cause has been shown for condonation. The CIT(A) thus dismissed all the appeals *in limine* without going into the merits of the case.

6. On perusal of the first appellate order, it is noticed that the late filing fee under Section 234E has been imposed for delay in filing the relevant TDS statements but however all such Quarterly TDS statements filed relate to Assessment Year 2013-14 i.e. period prior to amendment in S. 200A of the Act by Finance Act, 2015.

7. S. 200A specifically provides for computing fee payable under Section 234E w.e.f. 01.06.2015. It is thus the case of the assessee that Section 234E being a charging provision creating a charge for levying fee for certain defaults in filing statements and fee prescribed under Section 234E cannot be levied without a regulatory provision found in Section 200A for computation of fee prior to 01.06.2015.

8. With effect from 01.07.2012, Section 234E was introduced in the Act for levying fee for default in furnishing the statement of tax deducted or collected at source. Section 200A of the Act pertains to processing of statement of tax deducted at source. This provision provides for processing the statement filed by person under S. 200 of the Act deducting the tax. Prior to 01.06.2015, this provision did not contain any reference to adjustment of fee to be computed in accordance with provisions of Section 234E of

the Act. This provision was made effective only from 01.06.2015.

9. In this backdrop, the question arises is, whether late fee can be imposed for default under Section 234E of the Act. There are many decisions covering the field. Some decisions are in favour of the assessee while others are against. The CIT(A) however has not adjudicated the issue on merits.

10. Having regard to contentious legal issue of applicability of S. 234E itself arising in these appeals, it cannot be ordinarily assumed that delay in filing the appeal before the CIT(A) by the assessee is deliberate. The bonafides in delay is rather manifest. Needless to say, when the substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Under the circumstances, where the case of the assessee is backed by many judicial precedents, it would be unfair to assume that delay in filing the appeal before CIT(A) is beset with an act of *mala fide* to deny any remedy to the assessee. The delay in filing appeal is thus condoned.

11. We now advert to adjudication of the issue on merits. The pre-amended section 200A of the Act as stood on 31.03.2013 i.e. F.Y. 2012-13 relevant to A.Y. 2013-14 in question, did not permit processing of TDS statement for default in payment of late fee under section 234E of the Act. Hence, late fee charged for belated filing of TDS quarterly return could not be recovered by way of processing under section 200A of the Act. The Co-ordinate Bench of Tribunal in *Karnataka Grameen Bank vs. ACIT (2022) 145*

taxmann.com 192 (Bangalore) observed that amendment under section 200A providing imposition of fee if under section 234E could be computed at the time of processing of return and issue of intimation had come into effect only from 01.06.2015 and had only prospective effect and therefore, levy of late fee under section 234E would be illegal for statement of TDS in respect of period prior to 01.06.2015. In light of the decision of the Coordinate Bench, late fee for TDS quarterly statement under challenge in captioned appeals cannot be recovered by way of processing under section 200A of the Act. Therefore, the demand raised with reference to section 234E of the Act cannot be countenanced in terms of the pre-amended provision of S. 200A and hence, requires to be quashed. Consequential interest charges on fee levied fee under the provisions of the Act also requires to be quashed.

12. In the result, all the captioned appeals are allowed.

Order pronounced in the open Court on 11/10/2024.

Sd/-
[YOGESH KUMAR US]
JUDICIAL MEMBER

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER

DATED: 11/10/2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar