

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3924/M/2024
Assessment Year: 2015-16**

Mr. Ramesh Artimal Shivnani, 511, Arcadia, Hiranandani Estate, Ghodbunder Road, Patlipada, Thane - 400607 PAN: AAEPS9914P	Vs.	ITO, TDS-2, Thane, Quereshi Mansion, Gr. Flr., Teen Hath Naka, Gokhale Road, Naupada, Thane (West) - 400602
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri R.R. Makwana, Sr. D.R

Date of Hearing : 26.09.2024
Date of Pronouncement : 15.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 28.06.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2015-16.

2. At the outset, we observe that in this case vide order dated 06.05.2019, the Assessing Officer (AO) *levied the late fee for filing of TDS statement u/s 234E of the Act, for the period prior to 01.06.2015, when the provisions for levy of late fee u/s 234E of the Act were not there in the Act,* by relying on the judgment of the Hon'ble Gujarat High Court and the Hon'ble Rajasthan High Court in the cases of Rajesh Kourani vs. Union of India (2017) 83 taxmann.com 137 (Gujarat) and Writ Petition Civil No.8672 of 2014 dated

28.07.2015 respectively, whereas it is also a fact that various courts including Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India (2016) 73 taxmann.com 252 (Kar.) has held that the enabling provision u/s 200A of the Act for laving late fee u/s 234E of the Act, came into effect from 01.06.2015 and therefore prior to that period, no computation of fee or demand u/s 234E of the Act could be made for the TDS deducted for respective assessment years prior to 01.06.2015. And therefore in view of judgment of Karnataka High Court, the levy of late fee for the period prior to 01.06.2015 as levied in the instant case to the tune of Rs.4,41,400/- is unsustainable.

3. However, we observe from the impugned order that before the Ld. Commissioner the order passed by the ITO TDS-2, Thane dated 06.05.2019 was challenged by the Assessee, however the Ld. Commissioner dismissed the appeal and affirmed the levy of late fee by holding as under:

“There cannot be any appeal against the letter issued by the AO for recovery of demand as the orders appealable before the Ld. CIT(A) are enlisted in section 246A of the Act and the letter issued by the AO for recovery of demand does not find any place in the section. In view of these facts, since no appeal lies against the letter issued by the AO for recovery of demand, before the Ld. CIT(A) present appeal becomes infructuous and is dismissed.

4. In our considered view, may be the order dated 06.05.2019 is demand of late fee levied u/s 234E of the Act for filling the TDS return after due date, however, it is a fact that in para No.4 of the said order passed by the ITO TDS-2, Thane, the AO has given liberty to the Assessee to challenge the same before the Ld. CIT(A).

4.1 It appears from the record that main grievance of the Assessee was against the raising the demand u/s 234E of the Act, however, the Ld. Commissioner misconstrued the same and not treated the demand raised by the AO as appealable order.

4.2 Hence considering the peculiar facts and circumstances of the case, as we have observed above that prior to the period i.e. 01.06.2015, no enabling provision for levy of late fee was there in the relevant provisions of the Act and the enabling provision came into effect from 01-06-2015 only. Hence, respectfully following the judgment of the Hon'ble Karnataka High Court referred to above in view of judgment by Hon'ble Apex Court in CIT Vs. Vegetable Products Ltd. 88 ITR 192 wherein it was laid down that where two views possible then view favorable to the Assessee must be adopted, we are inclined to delete the late fee levied by the AO, thus the same is deleted accordingly.

5. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 15.10.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.