

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2193, 2194, 2195, 2196, 2197, 2198,
2199 & 2200/CHNY/2024**

निर्धारण वर्ष/Assessment Years: 2013-14, 2014-15 & 2015-16

M/s. MM Engineers,
19/9, 1st Street,
Manickavasagar Nagar,
Kavundampalayam,
Coimbatore – 641 030.

The Income Tax Officer,
Vs. Non-Corporate Ward-3(1),
Coimbatore.

PAN: AAIFM 8844N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Smt. R. Anita, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 22.10.2024

घोषणा की तारीख/Date of Pronouncement

: 22.10.2024

आदेश / O R D E R

PER BENCH:

These eight appeals by the assessee are arising out of the different orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) in Order Nos.ITBA/NFAC/S/250/2024-25/1065860347 (1) , 1065860771(1), 1065861128(1), 1065861916(1), 1065861539(1), 1065863066(1),

1065864356(1) & 1065863504(1) of even date 20.06.2024. The return of income was processed and intimation u/s.143(1) of the Income Tax Act, 1961 (hereinafter the 'Act') was issued by the Centralized Processing Center, Bengaluru for the assessment years 2013-14, 2014-15 & 2015-16 vide orders of even date 29.04.2023.

2. The only common issue in these eight appeals of assessee is as regards to the order of CIT(A) confirming the action of AO in levying penalty of late fee u/s.234E of the Act for late filing of TDS in Form 26Q quarterly return for financial years 2012-13 to 2014-15 and corresponding interest. The assessee, in these eight appeals, has raised first issue that the CIT(A) has passed ex-pare order and passed order without giving reasonable opportunity of being heard. The assessee's contention is that the CIT(A) and AO, both, has not properly appreciated the explanations provided that levying of late fee u/s.234E of the Act is applicable from 01.06.2015 only as held by various courts.

3. Now before us, the assessee moved adjournment petition. But going by the issue and as pointed by Id. Senior DR, the issue is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of Conceria International Pvt. Ltd., vs. ITO reported in

157 Taxmann.com 335, we proceed with hearing and heard Id.Senior DR.

4. We have also perused the order passed by AO levying late fee u/s.234E of the Act for eight quarters spreading in financial years 2012-13, 2013-14 & 2014-15. We noted the fact that the assessee is a partnership firm and assessed to TDS under TDS, Ward-1, Coimbatore. In ITA No.2193/CHNY/2024 for financial year 2012-13 i.e., for quarter-2, assessee filed TDS return in Form No.26Q belatedly and accordingly, intimation was passed by AO u/s.200A of the Act dated 12.11.2013 levying late filing fee u/s.234E of the Act for an amount of Rs.32,669/-. The AO as well as CIT(A) noted the fact that the late filing fee u/s.234E of the Act is levied for the period before 01.06.2015 under intimation u/s.200A of the Act and the same was agitated by assessee that the assessee's matter is covered by the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India reported in 72 Taxmann.com 252. The assessee moved a rectification application u/s.154 of the Act against the intimation passed by AO u/s.200A of the Act for rectification of the order levying late filing fee u/s.234E of the Act. Consequently, AO passed order u/s.154 of the Act confirming the same demand u/s.234E of the Act amounting to Rs.32,669/- and

also levied corresponding interest u/s.220(2) of the Act amounting to Rs.36,838/-. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) by going through the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi, *supra*, and also the decision of Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. UOI reported in 83 Taxmann.com 137, dismissed the appeal and confirmed the levy of fee for late filing of TDS quarterly returns in Form No.26Q u/s.234E of the Act by observing in paras 7.4 & 7.5 as under:-

“7.4 It is worthwhile to mention that the Hon'ble Gujarat High Court has after examination at length, differed with the judgment of the Hon'ble Karnataka High Court given in the case of Fatheraj Singhvi, which has also been relied upon by the appellant. Appellant has also relied upon the judgment of the Hon'ble Kerala High Court in the case of Jiji Varghese. It may be respectfully mentioned in that regard that the decision in the case of Rajesh Kourani (supra) was not brought to the attention of the Hon'ble Court. Further, other judgments relied upon by the appellant, of various Tribunals, have also not taken into account the detailed judgment given in the case of Rajesh Kourani (supra).

7.5 Keeping the above in mind, considering the specific provision introduced by section 234E of the Act and placing reliance on the judgment in the case of Rajesh Kourani (supra), I am of the opinion that the appeal of the appellant deserves to be dismissed.

Aggrieved, now assessee is in appeal before Tribunal.

6. We noted that now this issue stands covered by the decision of Hon'ble Madras High Court in the case of Conceria International (P.) Ltd., *supra*, wherein it is held 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/infraction 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.

We noted that the Hon'ble High Court has interpreted the provisions of section 234E of the Act and held that this provision of section 234E of the Act is substantive provision and it's levy is not dependent on provision of section 200A(1)(c) of the Act, which only prescribes recovery mechanism. After going through the decision of Hon'ble Madras High Court and also the provision of section 234E of the Act, makes 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 / infraction 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. In view of the above factual position and legal precedents, we uphold

the order of CIT(A) confirming the action of AO in levying late fee u/s.234E of the Act. In term of the above, other seven appeals are also decided accordingly. Accordingly, these eight appeals of the assessee are dismissed.

7. In the result, the appeals filed by the assessee in ITA Nos.2193 to 2200/CHNY/2024 are dismissed.

Order pronounced in the open court at the time of hearing on 22nd October, 2024 at Chennai.

Sd/-

(जगदीश)

(JAGADISH)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 22nd October, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT