

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.173/Nag./2024
(Assessment Year : 2012-13)

ITA no.174/Nag./2024
(Assessment Year : 2012-13)

ITA no.175/Nag./2024
(Assessment Year : 2012-13)

ITA no.176/Nag./2024
(Assessment Year : 2013-14)

ITA no.177/Nag./2024
(Assessment Year : 2013-14)

ITA no.178/Nag./2024
(Assessment Year : 2014-15)

ITA no.179/Nag./2024
(Assessment Year : 2014-15)

ITA no.180/Nag./2024
(Assessment Year : 2014-15)

ITA no.181/Nag./2024
(Assessment Year : 2014-15)

Sachin Ramesh Holey
202, Narmada House
Kakkaddara, Post Talegaon,
Ashti 442 202 PAN – NGPSI2079E

..... Appellant

v/s

Income Tax Officer
Ward-1, Wardha

..... Respondent

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 13/11/2024

Date of Order – 18/11/2024

ORDER

PER BENCH

These appeals have been filed by the assessee challenging the impugned consolidated orders of even date 25/01/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2012–13, 2013–14, 2014–15 respectively, which emanate from the order passed under section 200(A) of the Income Tax Act, 1961 (*"the Act"*). Since common issues are involved, therefore, we proceed to dispose off these appeals by way of this consolidated order for the sake of convenience and brevity.

2. The short point of adjudication is whether the late fee under section 234E of the Act can be imposed prior to 01/06/2015?

3. We have heard the arguments of the rival parties, perused the material available on record and gone through the orders of the authorities below. In the present case, the Assessing Officer has levied late fee under section 234E of the Act for the assessment year 2012–13, 2013–14, 2014–15 respectively. The amendment to the provisions of section 200A of the Act came into effect from 1st June 2015. The Co-ordinate Bench of the Tribunal, Chennai Bench, Chennai, in S.S.S. Construction v/s ACIT, ITA no.3495 to 3504/Ch./2019, vide order dated 22/04/2022, has considered this issue by following the judgment of the Hon'ble Karnataka High Court in Fatehraj Singhvi v/s Union of India, [2016] 289 CTR 602 (Kar.) and also considered the judgment of the Hon'ble High Court in Olari Little Flower Kuries Pvt. Ltd. v/s Union of India, [2022] 134 taxmann.com 111 (Ker.), holding that the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated returned filed for the period prior to 1st June 2015 is invalid. Relevant portion, vide Para-4 of the order dated 22/04/2022 (supra), is extracted below:-

"4. None appeared for the assessee. We have heard learned DR and perused orders of the authorities below. We find that the learned CIT(A) has disposed off appeals filed by the assessee on technical grounds without condoning delay in filing appeals, although, the assessee has filed petition for ITA No. 3495 to 3504/Chny/2019 condonation of delay. We find that the issue involved in the present appeals filed by the assessee is on levy of late fee u/s.234E of the Act, for belated filing of quarterly TDS returns beyond prescribed date and this issue is covered by various decisions of the Tribunal and High Courts, including decision of the co-ordinate Bench of ITAT., Chennai. The Tribunal in the case of M/s. M.F. Textiles Pvt.Ltd. Vs. ACIT in ITA Nos. 578 & 579/Chny/2021 dated 24.02.2022 had considered an identical issue in light of provisions of section 234E of the Act and also amendment to section 200A by Finance Act, 2015 w.e.f. 01.06.2015 and held that in absence of enabling provision u/s.200A of the Act, the Assessing Officer cannot levy late fee u/s.234E of the Act for belated filing of quarterly TDS return for period prior to 01.06.2015. The relevant findings of the Tribunal in ITA Nos.578 & 579/Chny/2021 dated 24.02.2022 are reproduced as under:-

"5. We have heard both the parties, perused the materials available on record and gone through the orders of authorities below. The solitary issue that needs to be resolved in the given facts and circumstances of the case is whether the Assessing Officer can levy late fee prescribed under section 234E of the Act, when the quarterly return filed by the tax deductor for the period prior to 01.06.2015, when the law has been Page | 4 Bank of India, Panchgaon Branch ITA no.93/Nag./2023 ITA no.94/Nag./2023 ITA no.95/Nag./2023 amended by Finance Act enabling the Assessing Officer to compute late fee while processing TDS returns under section 200A of the Act.

ITA No. 3495 to 3504/Chny/2019 The provisions of section 234E of the Act has been inserted to the statute by Finance Act with effect from 01.07.2012 and provides levy of late fee for belated filing of quarterly return filed by the tax deductor. The Assessing Officer started levying of late fee under section 234E of the Income Tax Act, 1961 while processing quarterly TDS return and started issuing intimation to the assesseees. The issue has been challenged before various Courts by the assesseees by writ and challenged the validity of provision of section 234E of the Act. In some cases, some Courts have granted stay of operation of intimation issued by the Department under section 200A of the Act. Therefore, on the basis of judgement of the Hon'ble High Court, the assesseees have started challenging the intimation issued by the Assessing Officer before the Id. CIT(A). The Id. CIT(A) did not entertain the appeal filed by the assessee on both counts, including on limitation in filing the appeal as well as on merits of the issue and rejected the arguments taken by the assessee and confirmed late fee levied under section 234E of the Income Tax Act, as per mandate of the statute. In the meantime, the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) had considered the issue and after analyzing the provisions of section 234E of the Act and section 200A of the Act and held that in the absence of enabling provision in section 200A of the Act, the Assessing Officer cannot levy late fee under section 234E of the Act, while

processing the quarterly TDS return filed for the period of the respective assessment years prior to 01.06.2015. A similar view has been expressed by the Hon'ble Kerala High Court in the case of Olari Little Flower Kuries (P.) Ltd. v. Union of India [2022] 134 taxmann.com 111 (Kerala) after considering the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 CTR 602 (Karnataka) and held that the provisions of section 200A of the Act were mandated to enable computation of late fee payable under section 234E of the Act, at the time of processing of quarterly TDS return and the said amendment came into effect from 01.06.2015. Thus, the intimation issued by the Assessing Officer under section 200A of the Act to levy late fee for belated return for the period prior to 01.06.2015 is invalid. Subsequent to the decisions of the Hon'ble Karnataka High Court and the Hon'ble Kerala High Court, series of decisions have been rendered by various Benches of the Tribunal and held that late ITA No. 3495 to 3504/Chny/2019 fee under section 234E of the Act cannot be levied for the period prior to 01.06.2015, because, there was no enabling provision to levy such late fee.

6. In the present appeals, on perusal of the facts, we find that the assessment years involved are prior to 01.06.2015. Therefore, we are of the considered view that the late fee charged by the Assessing Officer under section 234E of the Act, while processing quarterly TDS return under section 200A of the Act, is without any authority and invalid. Hence, by respectfully following the decision of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. Union of India [2016] 289 Page | 5 Bank of India, Panchgaon Branch ITA no.93/Nag./2023 ITA no.94/Nag./2023 ITA no.95/Nag./2023 CTR 602 (Karnataka), we are of the considered view that the Assessing Officer cannot levy late fee while processing of TDS return under section 200A of the Act upto the financial year 2014-15. Since, late fee charged in the present case pertaining to the financial year 2013-14, we direct the Assessing Officer to delete the late fee charged under section 234E of the Act in the intimation issued under section 200A of the Act for the processing of quarterly TDS return filed by the assessee.

7. In the result, both these appeals filed by the assessee are allowed."

4. We find that the above decision of the Co-ordinate Bench in S.S.S. Construction (supra) squarely applies to the assessee's case. Apart from this, the issue is also decided by the Co-ordinate Bench of the Tribunal, Nagpur Bench, in Bank of India v/s ACIT, ITA no.104/ Nag./2022, etc., order dated 06/06/2022, wherein the Tribunal, Nagpur Bench, Nagpur, has decided the very same issue in favour of the assessee. In view of the above, we see no merit in the levy of late fee, which the learned Departmental Representative

in all his fairness also agreed. The learned CIT(A) had misdirected himself in dismissing the appeal on the ground of delay, because no such delay is apparent from Form no.35. Any way – the legal issue is well settled in favour of the assessee which has the concurrence of the Tribunal at various Co-ordinate Benches. The view of the Hon'ble Karnataka High Court is yet to be unsettled by the Hon'ble Apex Court. Accordingly, all the appeals are allowed in favour of the assessee.

5. In the result, all the nine appeals filed by the assessee are allowed.

Order pronounced in the open Court on 18/11/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 18/11/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur