

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN BENCH "DB", DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.44 to 51/DDN/2023
Assessment Years: 2015-16 & 2016-17

Chief Education Officer, Mayur Vihar, Dehradun, Dehradun	Vs.	CIT(A), Dehradun
PAN :MRTCO1830D		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. Amar Pal Singh, Sr. DR

Date of hearing	08.01.2025
Date of pronouncement	27.01.2025

ORDER

PER SATBEER SINGH GODARA, JM

The instant batch of eight appeals pertain to a single assessee herein, namely, Chief Education Officer, Dehradun. All other relevant details therein read as under:

Sl. No.	Appeal No.	Appellant	Respondent	Order Appealed against
1.	44/DDN/2023 for AY 2015-16	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019716(1) involving proceedings under Section 200A of the Act.

2.	45/DDN/2023 for AY 2015-16	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049020044(1) involving proceedings under Section 200A of the Act.
3.	46/DDN/2023 for AY 2015-16	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019612(1) involving proceedings under Section 200A of the Act.
4.	47/DDN/2023 for AY 2015-16	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019445(1) involving proceedings under Section 200A of the Act.
5.	48/DDN/2023 for AY 2016-17	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019224(1) involving proceedings under Section 200A of the Act.
6.	49/DDN/2023 for AY 2016-17	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019106(1) involving proceedings under Section 200A of the Act.
7.	50/DDN/2023 for AY 2016-17	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019059(1) involving proceedings under Section 200A of the Act.
8.	51/DDN/2023 for AY 2016-17	Chief Education Officer, Dehradun	CIT(A), Dehradun	CIT(A)/NFAC, Delhi's order dated 23.01.2023 passed in case no. ITBA/NFAC/S/250/2022-23/1049019160(1) involving proceedings under Section 200A of the Act.

Relevant proceedings in all the instant cases are u/s 200A r.w.s. 234E of the Income-tax Act, 1961 (in short "the Act" hereinafter)

2. Cases called twice. None appears at the assessee's behest. We accordingly proceeded ex-parte against the assessee/appellant.

3. The Revenue vehemently argues during the course of hearing that both the learned lower authorities have rightly levied the late filing fee herein forming subject matter of adjudication in all these eight appeals on account of the fact that the assessee/deductor had committed the corresponding default in belated filing/upholding of the prescribed statement under section 200 read with section 200A(c) r.w.s. 234E of the Act.

4. We notice in this factual backdrop that the statutory amendment herein i.e. u/s 200A(c) of the Act, stipulating computation u/s 234E, came to be inserted by the Finance (No.2) Act, 2015 w.e.f. 01.06.2015 which has been held as having prospective effect only in (2024) 167 taxmann.com 367 (Madras), Sri Rujula International Vs. PCIT as under:

1. *"The Writ Petition has been filed challenging the impugned Demand Intimation Letters, dated 28.03.2019, passed by the third respondent and to quash the same.*
2. *The learned counsel appearing on either side would submit that the Judgment of this Court reported in **2023 (10) TMI 1141 [M/s. True Blue Voice India Private Ltd., and another Vs. the Chief Commissioner of Income Tax - TDS, Chennai and others]** would squarely apply to the facts of the present case.*
3. *The relevant portion of the said Judgment is extracted below:-*

"10. There is no dispute on the aspect of validity of the Section 234E of the Act. The only issue that has to be decided in the present case is as

to whether the late fee can be imposed under Section 234E of the Act, while processing the statement of TDS under Section 200A of the Act for the subject assessment years?

11. On considering the submissions of both the learned counsel and while reading Section 234E of the Act, it appears that the Department/respondents can impose the late fee for the circumstances mentioned under Section 234E of the Act with effect from 01.07.2012, but not when they process the TDS under Section 200A of the Act. In the Finance Bill, 2015, Section 200A(1)(c) of the Act was introduced, which reads as follows:

"200A. Processing of statements of tax deducted at source.—

(1)

(a).....

(b).....

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"

12. Further, the objects and reasons for introduction of Section 200A(1)(c) of the Act are as follows:

"Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)

Under Chapter XVII-B of the Act, a person is required to deduct tax on certain specified payment at the specified rate if the payment exceeds the specified threshold. The person deducting tax ('the deductor') is required to file a quarterly Tax Deduction at Source (TDS) statement containing the details of deduction of tax made during the quarter by the prescribed due date. Similarly, under Chapter XVII-BB of the Act, a person is required to collect tax on certain specified receipts at the specified rates. The person collecting tax ('the collector') also is required to file a quarterly Tax Collection at Source (TCS) statement containing the details of collection of tax made during the quarter by the prescribed due date. In order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under section 234E of the Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector.

Finance (No.2) Act, 2009 inserted section 200A in the Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 243E was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fee payable under section 234E of the Act at the time of processing of TDS statements. It is, therefore, proposed to amend the provisions of section 200A of the Act so as to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Currently, the provisions of sub-section (3) of section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Act allows processing of the TDS correction statement. However, currently, there does not exist any provision for allowing a collector to file correction statement in respect of TCS statement which has been furnished. It is, therefore, proposed to amend the provisions of section 206C of the Act so as to allow the collector to furnish TCS correction statement. Currently, there does not exist any provision in the Act to enable processing of the TCS statement filed by the collector as available for processing of TDS statement. As the mechanism of TCS statement is similar to TDS statement, it is proposed to insert a provision in the Act for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A of the Act. The proposed provision shall also incorporate the mechanism for computation of fee payable under section 234E of the Act."

13. A reading of the above makes it clear that since no mechanism was available for determination of late fee payable under Section 234E of the Act at the time of processing TDS statements. Thus it was proposed to amend the provisions of Section 200A of the Act, so as to enable the computation of fee payable under Section 234E of the Act at the time of processing of TDS statement under Section 200A of the Act. Thus, the said sub-Section 200A(1)(c) of the Act was came to be inserted with effect from 01.06.2015.

14. Now the dispute is with regard to the assessment years 2012- 13, 2013-14, 2014-15 and the applicability of Section 200A(1)(c) of the Act for relevant assessment years. There is no dispute on the aspect that the TDS statement was filed under Section 200A of the Act and the respondent had also issued the intimation under Section 200A of the Act, which means the respondents have processed the returns under Section 200A of the Act. When the respondent had started to process the returns of the petitioner under Section 200A of the Act, obviously they have to follow the requirements under Section 200A of the Act. Section 200A(1)(c) of the Act was introduced with effect from 01.06.2015. A reading of the objects and reasons of the same makes it clear that since no mechanism was available, Section 200A(1)(c) of the Act was introduced for imposing late fee for the delay in filing statement of TDS. Therefore, from the introduction of the said Sub-Section it is clear that prior to the same, though Section 234E of the Act was introduced with effect from 01.07.2012, the Authorities were not empowered to impose the late fee while processing the statement of TDS under Section 200A of the Act.

15. The learned counsel for the respondent advanced his arguments on the aspect of the imposition of late fee by applying Section 200A(1)(c) of the Act retrospectively. This Court is not in agreement with the said submissions of the respondent. Since, there was no provision for imposing the late fee under Section 234E of the Act while filing and processing the TDS returns under Section 200A of the Act, clause (c) to Sub-Section(1) to Section 200A was introduced with effect from 01.07.2012. Therefore, the

aforesaid submission made by the learned counsel for the respondent is rejected by this Court.

16. Further it was stated by the respondent that they have no power to waive the late fee and only the Commissioner of Income Tax is empowered to pass the revised order by proper application of provision of Section 264C of the Act.

17. In view of the above, it is made clear that the respondent had imposed the late fee only under Section 234E of the Act for the assessment years 2012-2013, 2013-2014, 2015-2015. However, Section 200A(1)(c) of the Act was not introduced during the said assessment years. In the absence of any provisions under Section 200A of the Act, when they have processed the application for TDS under Section 200A, no late fee can be imposed under Section 234E. Hence, in such view of the matter, this Court feels that the impugned orders are liable to be set aside.

18. Accordingly, the impugned orders dated 24.09.2021 are set aside and the Department is directed to consider the reply of the petitioner dated 16.04.2019 as a revision application, which was earlier considered as a waiver application, and pass appropriate orders by taking into consideration of the order passed by this Court within a period of eight weeks from the date of receipt of copy of this order."

4. In the present case, the respondent had imposed the late fee only under Section 234E of the Act for the assessment years 2012-2013, 2013- 2014. However, Section 200A of the Act was not introduced during the said assessment years and it was introduced only with effect from 01.06.2015. Therefore, in the absence of any provisions under Section 200A of the Act, the respondents ought not to have imposed late fee under Section 234E while processing the applications for TDS under Section 200A. Hence, in such view of the matter, this Court is of the opinion that the impugned Demand Intimation Letters are liable to be set aside.

5. Accordingly, the impugned demand Intimation Letters dated 28.03.2019 are set aside and the Writ Petition stands disposed of. No costs."

5. The Revenue vehemently contends that the learned lower appellate authority has rightly refused to condone the impugned delay running in many years, at the assessee's behest in institution of the lower appeals. We are of the considered view that the assessee/deductor is a government office involving lot of administrative approvals from higher authorities. Coupled with that, Collector, Land & Acquisition vs. Mst. Katiji & Others

(1987) 167 ITR 471 (SC) has settled the issue long back that all such technical aspect must make way for the cause of substantial justice when the relevant explanation duly explains the reasons of the corresponding delay on account of the circumstances beyond control. We reiterate that the Revenue has no case on merits for levying the late filing fee herein under section 200A(c) read with section 234E of the Act upto 01.06.2015. We thus reverse the learned lower appellate authorities' identical findings refusing to condone the assessee's corresponding delay in all these cases. Ordered accordingly.

6. These assessee's five appeals ITA Nos. 44 to 48/DDN/2023 (upto the first quarter of AY 2016-17) are allowed and its latter three appeals ITA No. 49 to 51/DDN/2023 are dismissed in above terms. A copy of this order be placed in the respective case files.

Order pronounced in the open court on 27th January, 2025

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 27th January, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi