

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 257 & 258/RJT/2023

(निर्धारणवर्ष / Assessment Years: (2013-14 & 2014-15))

Nirmal Rajendra Jagetiya (Prop. of Manish Metal Corporation), 301, Gurunanak Apartment, Hirji Mistri Road, Jamnagar, Gujarat-360004	Vs.	Income Tax Officer TDS-3, Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.:RKTN0201E		
(Assessee)		(Respondent)

Assessee by : Shri Dushyant Maharshi, AR

Respondent by : Shri Ashish Kumar Pandey, Sr.DR

Date of Hearing : **16/10/2024**

Date of Pronouncement : **13 /01/2025**

आदेश / O R D E R

PER DR. ARJUL LAL SAINI, AM:

Captioned two appeals filed by the assessee, pertaining to Assessment Years 2013-14 and 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax(Appeals), (National Faceless Appeal Centre), which in turn, arise out of separate penalty orders passed by the Assessing Officer, under Section 234E of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], both dated 17.03.2017.

2. Since common and identical issues are involved, therefore, these two appeals have been clubbed and heard together and a consolidated order is

being passed for the sake of convenience and brevity. The facts, as well as grounds of appeal narrated in ITA No. 257/Rjt/2023, for Assessment Year 2013-14, have been taken into consideration for deciding these two appeals *en masse*.

3. The grounds of appeal, raised by the assessee, in lead case, in ITA No. 257/Rjt/2023, for Assessment Year 2013-14, are as follows:

- “1. *Ld. AO was erred in passing order u/s 234E of the Act, which is barred by limitation. Hon'ble CIT(A) has not considered ground raised by assessee.*
2. *Ld. AO erred in law as well as on facts in levying fee for non- filing of form no. 27EQ which is not at all required to be filed by the assessee. Hon'ble CIT(A) has not considered ground raised by assessee.*
3. *Ld. CIT(A) erred in law as well as on facts in allowing the relief for late fees u/s 234E only to the extent of period prior to 01.06.2015 and not for full period.*
4. *Ld. AO erred in law as well as on facts in levying late fee of Rs. 12,48,800/-, despite the sum collected by assessee is Nil and not required to file any such return as per proviso to section 206C(3) or section 206C(5) of the Act. Hon'ble CIT(A) has not considered ground raised by assessee.*
5. *Ld. AO erred in law as well as on facts in determining assessee is default u/s 206C (6A) of the Act, without applying proviso to that section. Hon'ble CIT(A) has not considered ground raised by assessee.”*

4. The relevant material facts, as culled out from the material on record, are as follows. In the assessee`s case, the assessment was completed, under section 143(3) of the Act, for Assessment Year 2013-14. The assessee is engaged in the business of "Scrap". During the course of assessment proceedings, it was noticed by the assessing officer that assessee has sold scrap to the tune of Rs.12,51,35,582/- in the financial year 2012-13, relevant to assessment year 2013-14. Since, the assessee is engaged in the business of "Scrap", therefore, assessing officer observed that assessee should collect TCS at the rate of 1% under section 206(C) of the Act. The assessing officer

referred the provisions of section 206(C) of the Act, which is reproduced below:

“ (1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the table below a sum equal to the percentage, specified in the corresponding entry in Column (3) of the said Table, of such amount as Income Tax:

Sr. No.	Nature of goods	Percentage
(i)	Alcoholic Liquor, for human consumption	One percent
(ii)	Tendu leaves	Five percent
(iii)	Timber obtained under a forest lease	Two & half percent
(iv)	Timber obtained by any mode other than under a forest lease	Two & half percent
(v)	Any other forest produce not being timber or tendu leaves	Two & half percent
(vi)	Scrap	One percent
(vii)	Minerals, being coal or lignite or iron ore	One percent

In the light of the above provisions of Section 206C(3) of the Act, person has to prepare and submit a statement in Form No. 27EQ to the prescribed income tax authority, within the time prescribed by Rule 31AA of the Income Tax Rules 1962. As the assessee, under consideration, is engaged in the business of "Scrap", therefore assessee is liable for collection of TCS within the provisions of Section 206(C) of the Act and subsequently liable for filling statement in Form No. 27EQ within the prescribed time.

5. On verification of the records, it was noticed by the assessing officer that assessee has not collected TCS to the tune of Rs. 12,51,355/-, on sale of scrap of Rs. 12,51,35,582/-, for the financial year (F.Y.) 2012-13, relevant to assessment year (A.Y.) 2013-14. The assessee has also not filed statement in form 27EQ for the year under consideration. In view of the above facts, the assessing officer, issued show-cause notices, to the assessee, vide, show - cause notices dated 16/3/2016, 1/6/2016, 19/7/2016 and 14/2/2017, wherein the assessing officer, asked the assessee, as to why TCS liability of Rs.

12,51,355/-, should not be determined by passing order u/s 206C(6) of the Income Tax Act. Further assessee was also required to show -cause, as to why late fees u/s 234E should not be determined for the default period.

6. In response to the above show- cause notices, the assessee submitted its reply before the assessing officer. However, assessing officer, rejected the contention of the assessee and observed that assessee is engaged in the business of "Scrap" and during the year under consideration, the assessee has sold scrap to the tune of Rs. 12,51,355/- and assessee has not collected TCS on such sale and as per the provisions of Section 206C(1) of the Act assessee is under an obligations to collect TCS. Due to non-collection of TCS, the assessee was treated as "Assessee in default". The amount of such TCS is determined at Rs. 12,51,355/- by passing the order under Section 206(C) of the Act dated 17/3/2017.

9. The assessing officer also noticed that as per the provisions of Section 234E of the Income Tax Act, any assessee, who fails to prepare and deliver a statement within prescribed time to the prescribed authority, is liable to pay an amount by way of fees for the default period. Here in this case the assessee has failed to submit the statement in Form 27EQ within the prescribed time to the prescribed authority in view of the same, the assessing officer held that there is a default period for levy of late fee under Section 234E of the Income Tax Act. The said default period is calculated below:

Sr. No.	Quarter	Due Dt of filing Form 27EQ	Date of filing Form 27EQ	Default period (in days) (upto date of order)	Fees per day	Amount of late fees u/s 234E
1	Q-1	15/07/2012	Not filed	1706	200	341200/-
2	Q-2	15/10/2012	Not filed	1614	200	322800/-
3	Q-3	15/01/2013	Not filed	1522	200	304400/-
4	Q-4	15/05/2013	Not filed	1402	200	280400/-
					Total	12,48,800/-

Therefore, the assessing officer computed the late fee, under Section 234E of the Act, for not filling statement in Form No. 27EQ, to the tune of Rs.12,48,800/-.

10. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of the Assessing Officer observing as follows:

“ 8. CIT(A) Remarks and Decision

8.1 The above grounds of appeal and submissions of the assessee have been carefully considered. The AO has levied late fee u/s 234E for four quarters of FY 2012-13 for the period starting from 15.07.2012, 15.10.2012, 15.01.2013 and 15.05.2013 respectively; and levied upto the date of order, i.e. 17.03.2017. Thus the issue involved in this appeal is as to whether late fee can be levied for the period before 01.06.2015 and for the period after 01.06.2015 or Not?

8.2 First we would consider the issue under appeal related to late fee levied before 01.06.2015. The assessee has placed reliance on numerous case laws in support of the premise that prior to 01.06.2015, under sec 200A(1)(c) to (e), adjustment of late fee u/s 234E was not allowable. This issue has been decided in favour of the assessee in the following case laws.

- (1) Honble Karnataka High Court Judgment in Fatheraj Singhvi and Ors Vs. Union of India (WA 2263 to 2274/2015 dated 26.08.2016)*
- (2) Madhya Pradesh Power Transmission Ltd. Vs DCIT, CPC-TDS (ITAT INDORE)*
- (3) Direx Systems Limited Vs ACIT, CPC-TDS (ITAT CHENNAI)*
- (4) Dr. C. Fernandes Co-operative Credit Society Ltd. Vs DCIT, CPC- TDS (ITAT BANGALORE)*
- (5) M/s. M.G.N. Khalsa High School Vs ACIT, CPC-TDS (ITAT AMRITSAR)*
- (6) Sibia Healthcare Pvt. Ltd. Vs. DCIT, CPC-TDS (ITAT AMRITSAR) - (ITA No.90/Asr/2015 dated 09-06-2015)*
- (7) Medical Superintendent Rural Hospital, Dobi BK Vs. DCIT, CPC-TDS (ITAT PUNE)*
- (8) GSSS Hari KE Kalan ICT Society Vs. DCIT, CPC-TDS (ITAT AMRITSAR)*
- (9) DABRA Vs. DCIT, CPC-TDS (ITAT AMRITSAR)*

(10) *GITA STAR HOTELS and RESORTS PVT. LTD., JAIPUR Vs. DCIT, CPC-TDS (ITAT JAIPUR)*

(11) *M/s. AJMER THERMOTECH PVT. LTD. Vs. ACIT, CPC-TDS (ITAT JAIPUR)*

(12) *SMT G INDHIRANI VS DCIT, CPC-TDS (ITAT CHENNAI)*

8.2.1 *The Hon'ble Income Tax Appellate Tribunal, Chennai, while deciding on the exact same issue of levy of late fee u/s 234E in a bunch of appeals, mentioned below has also ruled in favour of the assessees, holding that such levy could not be effected while processing the assessee's statements u/s 200A till 01.06.2015. The citations of cases along with the operative parts of the said Tribunal's judgment are extracted hereunder.*

- a) *"Smt. G. Indhirani v. DCIT, CPC-TDS, [ITA Nos. 1019, 1020 & 102/Mds/2015]*
- b) *M/s. RajaguruSpg.Mills.Ltd. v. DCIT, CPC-TDS [ITA. No. 1089/Mds/2015]*
- c) *Sri A.Dhakshinamurthy v. DCIT, CPC-TDS [ITA. No. 1090/Mds/2015] TAY DEPARTMENT*
- d) *M/s. Padma Textiles v. DCIT, CPC-TDS [ITA.No. 1089/Mds /2015]*
- e) *M/s.Murthy Lungi Company v. DCIT, CPC-TDS [ITA. No. 1092/Mds/2015]*

We have considered the rival submissions on either side and perused the relevant material on record. Section 200A of the Act provides for processing of the statement of TDS by making adjustment as provided in that Section. For the purpose of convenience, we are reproducing the provisions of Section 200A:

"200A (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this Section as deductor) under Section 200, such statement shall be processed in the following manner, namely-

(a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:

(i) any arithmetical error in the statement, or

(ii) on incorrect claim, apparent from any information in statement:

(b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement:

(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under Section 200 and Section 201, an any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by or the amount of refund.

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor, due to him under clause (c), and

provided that no intimation under this sub-Section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

*Explanation-*For the purposes of this sub-Section "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement-

i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-Section (1), the Board may make a scheme for centralised processing of statements of TDS to expeditiously determine the tax payable by or the refund due to the deductor as required under the said sub-Section.

7. The AO cannot make any adjustment other than the one prescribed above in Section 200A of the Act. By Finance Act, 2015, with effect from 01.06.2015, the Parliament amended Section 200A by substituting sub-Section (1) of clauses (c) to (e). For the purpose of convenience, we are reproducing the amendment made in Section 200A by the Finance Act, 2015 as under

"In Section 200A of the Income Tax Act, in sub-Section (1), for clauses (c) to (e), the following clauses shall be with effect from the 1st day of June, 2015, namely:-

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

(d) the sum payable by, or the amount of refund due to the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under Section 200 or Section 201

or Section 234E and any amount paid otherwise by way of tax or interest or fee.

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount or refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

Therefore, it is obvious that prior to 1.6.2015, there was no enabling provision in Section 200A for making adjustment in respect of the statement filed by the assessee with regard to tax deducted at source by levying fee under Section 234E. The Parliament for the first time enabled the AO to make adjustment by levying fee under Section 234E with effect from 1.6.2015. Therefore, as rightly submitted by the Ld. Counsel for the assessee, while processing statement under Section 200A, the AO cannot make any adjustment by levying fee under Section 234E prior to 1.6.2015. In the case before us, the AO levied fee under Section 234E while processing the statement of tax deducted at source under Section 200A. Therefore, this Tribunal is of the considered opinion that the fee levied by the AO under Section 234E while processing the statement of TDS is beyond the scope of adjustment provided under Section 200A of the Act. Therefore, such adjustment cannot stand in the eye of law.

If the assessee fails to pay the fee for the periods of delay, then the assessing authority has all the powers to levy fee while processing the statement under Section 200A by making adjustment after 1.6.2015. However, prior to 1.6.2015, the AO had every authority to pass an order separately levying fee under Section 234E. What is not permissible is that levy of fee under Section 234E while processing the statement of TDS and making adjustment before 1.6.2015. It does not mean that the AO cannot pass a separate order under Section 234E levying fee for the delay in filing the statement as required under Section 200(3)....

11. In view of the above discussion, the Tribunal is of the considered opinion that the AO has exceeded his jurisdiction in levying fee under Section 234E while processing the statement and make adjustment under Section 200A of the Act. Therefore, the impugned intimation of the lower authorities levying fee under Section 234E cannot be sustained in law. However, it is made clear that it is open to the AO to pass a separate order under Section 234E levying fee provided the limitation for such a levy has not expired. Accordingly, the intimation under Section 200A as confirmed by the CIT(A) in so far as levy of fee under Section 234E is set aside and fee levied is deleted".

8.2.2 Attention is also drawn to the following decisions of the Kerala High Court:

- (i) *Jiji Varghese v ITO*, 443 ITR 267 (Kerela) dated 24.03.2022;
- (ii) *Eurotech Maritime Academy (P.) Ltd. v ITO*, 137 taxmann.com 63 (dated 07.01.2022);
- (iii) *Nila Bakers & Confectioneries (I) (P.) Ltd.*, 139 taxmann.com 535 (dated 20.12.2021);

- (iv) *United Metals v ITO, 137 taxmann.com 115 (dated 10.12.2021);*
- (v) *Olari Little Flower Kuries (P.) Ltd. v Union of India, 134 taxmann.com 111 (dated 22.10.2021);*

8.2.3 In all these cases, the Kerala High Court has held that levy of late fee u/s 234E for the period prior to 01.06.2015 is invalid and that the same provision 234E r.w.s 200A is prospective in nature. In this regard, attention is drawn to the recent decision of the Hon'ble High Court of Kerala in the case of Jiji Varghese, cited supra. The relevant portion of the Kerala High Court decision is reproduced below:

".....7. In the decision in M/s. Sarala Memorial Hospital v. Union of India and Another (W.P.(C) No.37775 of 2018) an identical question arose for consideration. After considering the statutory provisions of section 234E and section 200A of the Act and the implications of the amendment brought in to the Act, it was held that the amendment would take effect only from 1st June, 2015 and is thus prospective in nature. The aforesaid judgment has become final and is binding upon the authorities. Thus, the jurisdiction to levy late fee under section 234E arises only from 01.06.2015 and not earlier...."

.....10. In view of the above, the demand in Ext.P1 to Ext.P9 intimations for the period from 2012-13 to 2014-15 is bereft of authority and cannot be legally sustainable.

11. Accordingly, I quash Ext.P1 to Ext. P9 intimations to the extent it demands late fee under section 234E for the period from 2012-13 till 01.06.2015."

8.2.4 Respectfully following the ratio laid down by the decisions in the case laws cited supra, it is held that the late fee u/s 234E of the I.T. Act can't be levied for the period before 01.06.2015; and therefore the same is liable to be deleted for the period upto 01.06.2015.

8.3 Now we take up the issue under appeal related to late fee levied for the period after 01.06.2015 to 17.03.2017. In this context, attention is drawn to the decision of the Hon'ble ITAT, Chennai Bench in the case of Lampmaster Wolters India (P) Ltd. v ITO, (2022) 141 taxmann.com 149 (Chennai Trib.) dated 29.07.2022 in which levy of the fee u/s 234E for the period after 01.06.2015 has been sustained. Vide this decision, the **Hon'ble ITAT, Chennai has held that late fees u/s 234E can be levied with respect to belated TDS returns filed on or after 01.06.2015, and if these returns are processed by the TDS AO on or after 01.06.2015.** The relevant paras are reproduced as under:

"9. We have heard both the parties, perused material available on record and gone through orders of the 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

*amended by Finance Act enabling the Assessing Officer to compute late fee while processing TDS returns under section 200A of the Act. 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 ld. CIT(A). The ld. CIT(A) has 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 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.***

10. In this case, for the AY 2013-14, the quarterly return filed by the assessee and order passed by the Assessing Officer are on or before 01.06.2015 and thus, there cannot be any late fees for filing return u/s.234E of the Act, and hence, addition made for the AY 2013-14 is deleted. For the AY 2014-15, the assessee has filed Form 26Q for 3rd quarter of FY 2013-14 after 01.06.2015 and the CPC (TDS) has processed the return filed by the assessee after 01.06.2015 and thus, late fees provided u/s. 234E of the Act, can be levied and thus, late fees levied for delay in filing Form 26Q for the 3rd quarter alone is sustained. As far as other returns filed by the assessee for the FY 2013-14 relevant to the AY 2014-15, all returns were filed and processed before 01.06.2015 and thus,

the Assessing Officer cannot levy late fees u/s.234E of the Act and thus, late fees filed for the AY 2014-15 except Form 26Q for 3rd quarter, is deleted. As regards, quarterly return filed for then AY 2015-16, the assessee has filed all returns on or after 01.06.2015 and the CPC(TDS) had also processed the returns filed by the assessee on or after 01.06.2015 and thus, the Assessing Officer can levy late fees u/s.234E of the Act and thus, late fees levied by the Assessing Officer u/s.234E of the Act, for the AY 2015-16, is confirmed."

*8.3.1 From the above decision of Hon'ble ITAT, Chennai, it is very clear that the AO can levy late fees u/s 234E for all the returns filed by the TDS deductor on or after 01.06.2015 and that the AO-CPC, TDS process the same returns filed by the TDS deductor on or after 01.06.2015. **Similar decision has been rendered by the Hon'ble ITAT, Delhi in the case of Vkare Bio Sciences (P.) Ltd. v. DCIT, (2022) 134 taxmann.com 7 (Delhi - Trib.) dated 23.09.2021 wherein it has been held that similar delay in filing TDS statement beyond 01.06.2015 till filing of TDS return will attract levy of late filing fee u/s 234E.***

*8.4 In this case, the assessee assessee has not filed the **Form 27EQ for the First, second, third and Fourth Quarters of FY 2012-13, and the AO- ITO, TDS-3, Jamnagar has passed the order u/s 234E after 01.06.2015 i.e. on 17.03.2017.** Based on the above discussion in the earlier paras, and by relying on the various case laws quoted thereon, It is pointed out that the assessee **it is hereby held that the late fees provided u/s 234E of the Act can be levied and the said late fees levied for not filing Form-27EQ for the period after 01.06.2015 to till the date of order u/s 234E is hereby upheld. It is pointed out that the applicant has not pointed out any arithmetic error in the computation of the fee levied. Thus, the AO is hereby directed to delete the late fee levied if any for the period prior to 01.06.2015 and late fee levied if any for the period after 01.06.2015 is hereby confirmed.***

*8.5 Based on the above decision/discussion in the earlier paras, the default period (**in Days**) for levy of late fee u/s 234E upheld for the first, second, third and Fourth Quarters of FY 2012-13 is computed as below:*

Sr. No.	Quarter	Due Date of filing Form 27EQ	Date of Order u/s 234E	Total default period as per Order u/s 234E	Relief granted upto 01.06.2015	Late fee upheld for the period
1	Q-1	15.07.2012	17.03.2017	1706	1051	655
2	Q-2	15.10.2012	17.03.2017	1614	959	655
3	Q-3	15.01.2013	17.03.2017	1522	867	655
4	Q-4	15.05.2013	17.03.2017	1402	747	655

*Thus, based on discussion in the earlier paras of this order, the AO is hereby directed to **delete** the late fee levied for the period prior to 01.06.2015 and late fee levied for the period after 01.06.2015 upto the date of order u/s 234E (17.03.2017) i.e. for 655 days is **hereby confirmed.**”*

11. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

12. Learned Counsel for the assessee argued that the Ld. AO has made the addition based on the fact that the assessee has submitted Form No.27EQ, very late and not within the time and due date of filing Form No.27EQ quarterly, as prescribed in the Act and Rules. The Ld. Counsel pointed out that Ld. AO has framed the late fee-penalty order under Section 234E of the Act instead of Section 200A of the Act. Since the order has been framed by the assessing officer under section 234E of the Act, which is wrong section and correct section is section 200A of the Act, under which the assessing officer supposed to frame the order. Therefore, order framed under Section 234E of the Act may quashed.

13.The Ld. Counsel for the assessee further submitted that in assessee's case, the quantum addition has been deleted by the Ld. CIT(A), vide order dated 11.02.2019, wherein the Ld. CIT(A) observed as follows:

“ 14.16 In view of the facts and legal position as discussed in preceding paragraphs of this appeal order it is held that the ITO TDS, Jamnagar is not correct in raising demand u/s. 206C(6) /206C(7) on account of late filing of form nos. 27C which includes demand of TCS and interest as the assessee was not liable to collect the Tax at source on the sales made and in respect of which form nos. 27C were submitted. In such cases no demand can be raised due to non collection of tax at source on the sales made and because of that no interest u/s. 206C(7) can also be charged. In view of this, the ITO TDS, Jamnagar is directed to delete only those addition or demand which has been raised by him in his order u/s. 206C(6) /206C(7) because of non collection of tax at source by the assessee on the sales made to the buyers and in respect of which form nos. 27C are filed by the assessee to him during the course of recovery proceedings and appellate proceedings/remand proceedings and which are verified by him during the course

of remand proceedings and which are also filed to the office of CIT, TDS subsequently. Thus, the grounds of appeal nos. 2 and 4 of the assessee are allowed subject to this direction.

14.17 The ground of appeal no. 5 of the assessee is that the AO has erred in law as well as on fact to levy the charges amounting to Rs. 12,48,800/- as assessee is not liable to deduct the tax and hence question of filing returns u/s 234E do not arise and hence the same may be deleted. This ground of appeal of the assessee cannot be entertained as the order u/s 234E of the Act is separately passed and this ground of appeal can be entertained only if the appeal is filed separately against this order u/s 234E of the Act. However, since the assessee has filed appeal against the order u/s 206C(6)/206C(7) of the Act and therefore, the issue raised as per above ground of appeal does not arise out of this order u/s 206C(6)/206C(7). In view of this, the ground of appeal no. 5 of the assessee is hereby dismissed.

15.0 In the result, appeal is partly allowed.”

14. The Ld. Counsel for the assessee took us through the order of the Ld. AO i.e. order giving appeal effect dated 27.02.2019 (vide paper book page 32) wherein entire quantum addition made by the AO was deleted. Therefore, since the quantum addition has been deleted, therefore, penalty does not sustain. For that, Ld. Counsel for the assessee relied upon the judgment of Co-ordinate Bench of ITAT in ITA Nos. 347/Rjt/2018 & 3 Ors., Vishal Enterprise & 3 Ors., order dated 31.05.2019.

15. Similarly, the Ld. Counsel for the assessee has also relied on the judgment of Co-ordinate Bench of ITAT, Jaipur in the case of Eid Mohammad Nizamuddin vs. ITO, [2020] 116 taxmann.com 579 (Jaipur-Trib.), wherein it was held that if a person responsible for collecting TCS does not collect tax or fails to pay it, he will be liable to pay interest for period till its payment; however, where his buyer has furnished return of income and paid tax, he will not be deemed to be an assessee in default and interest shall be payable for period till filing of return by such buyer. There is no mandatory requirement to pay any interest under section 206C(7) as part of certification in Form 27BA and information as to whether assessee

has already paid interest or not has to specify in Form 27BA and it is only an information seeking requirement and not such a requirement in absence of which certification in Form 27BA will be invalid.

16. On the other hand, Ld. Sr.DR for the Revenue vehemently argued that if the Ld. AO framed the order under Section 234E of the Act, then it does make any difference, as the material and the adjudication made by the Ld. AO is in accordance with law wherein the assessment was made on account of late filing of Form No. 27EQ, therefore, amount of late fee under Section 234E for not filing statement in Form No.27EQ, was determined to the tune of Rs.12,48,800/-. Therefore, just quoting the wrong Section in the order does not mean that the penalty/late fee order under section 234E of the Act, framed by the AO should be vitiated. The Ld. DR also placed reliance on the judgment of Hon'ble Supreme Court in case of CIT vs. Siyaram Metal Udyog (P.) Ltd., [2017] 78 taxmann.com 295 (SC).

17.The Ld. DR further pointed out that since the quantum has been deleted then it does not mean that the penalty should be waived or deleted. This is the penalty on account of late filing of Form No.27EQ and does not have any connection with deletion of quantum. Therefore, penalty under Section 234E of the Act, on account of late filing of Form No.27EQ should not be waived.

18.The Ld. DR also stated that there was an amendment in section 200A of the Act, on 1st June, 2015 and prior to that, the Section 200A of the Act, was there, but Clause (C) of Section 200A of the Act was inserted by Finance Act, 2015 w.e.f. 1st June, 2015. Therefore, w.e.f. 1st June, 2015, the Clause C of Section 200A states as follows:

“Processing of statements of tax deducted at source.

200A. (1).....
.....

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

19 . Therefore, Ld. DR contended that w.e.f. 1st June, 2016, the late- fee, if any, should be computed in accordance with the provisions of Section 234E of the Act. Since, Section 234E of the Act is machinery provision and therefore the AO has rightly computed the late- fee amount, under Section 234E of the Act, prior to 1st April, 2015. Therefore, learned DR argued that addition made by the assessing officer may be confirmed.

20. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that during the Financial year (FY) 2012-13, relevant to assessment year 2013–14, the assessee has sold recycled metals (commonly known as "Scrap") to manufacturers as well as other traders to the tune of Rs. 12,51,35,582/-. The Assessment was completed vide order u/s. 206C(6) & 206C(7) dated 17/03/2017, determining the tax liability of Rs. 20,02,168/- (including interest). Being aggrieved with the order, assessee had preferred appeal before Hon. CIT(A), Jamnagar. The Appellate order was passed u/s. 206C(6)/206(C)(7) on 19/02/2019, in favour of assessee. Further, order u/s 234E of the Act, was also passed dated 17/03/2017, determining late filing fees u/s 234E of Rs. 12,48,800/-. Against the order u/s 234E of the Act, the assessee has filed an application u/s 154 of the Act dated 19/04/2017. Aggrieved by the order u/s 154 of the Act, an appeal was preferred before Hon. CIT(A), Jamnagar, which was heard and dismissed.

21. Since, the above stated appeal was dismissed, an appeal against the order u/s 234E of the Act was before Hon. CIT(A) and Appellate order dated 18/05/2023 was passed by Hon. CIT(A), NFAC. The Appeal was partly

allowed by deleting the late fees levied for the period prior to 01/06/2015 and late fees levied for the period after 01/06/2015 upto the date of order u/s. 234E that is, 17/03/2017, was upheld. Now, being aggrieved by the order of Hon. CIT(A), NFAC date 18/05/2023, the assessee is in further appeal before us.

22. We note that Id CIT(A) has passed the order only on one ground that provisions of Section 234E of the Act, shall not be retrospectively applied and hence, late filing fees for the period before 01/06/2015 cannot be levied. No other issues raised by assessee were considered before passing appellate order. We note that fees for default in furnishing statements u/s 234E of the Act, can be levied, if a person fails to deliver or cause to be delivered a statement within the time prescribed in section 200(3) or proviso to 206C(3) of the Act. At this juncture, it is appropriate to mention Sub-section 3 of Section 206C of the Act, which reads as under:

“206C. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

.....
*(3) Any person collecting any amount under sub-section (1) or sub-section (1C) *** shall pay within the prescribed time the amount so collected to the credit of the Central Government or as the Board directs:”*

23. The Section 206C(3) gives reference to section 206C(1) & (1C) for payment of tax collected. We find that assessee was not liable to collect tax u/s 206C as the buyer has furnished form 27C and the same has been confirmed, vide order of Hon. CIT(A), Jamnagar dated 19/02/2019 (Copy submitted by the assessee before the Bench). Hence, as no tax was collected as per provisions of section 206C(1) or (1C), the assessee is not liable to submit return statement in form 27EQ as mentioned in Rule 31AA of IT Rules, 1962 which reads as.....

"31AA. (1) Every collector, shall, in accordance with the provisions of the proviso to subsection (3) of section 206C, deliver, or cause to be delivered, to the Director General of Income- tax (Systems) or the person authorised by the Director General of Income-tax (Systems), a quarterly statement in Form No. 27EQ."

Therefore, assessee is not required to file the statement in form 27EQ and hence, assessee is not liable for late filing fees u/s. 234E of the Act, which is in accordance with the provision of subsection (2) of 234E of the Act. Levying of late filing fees without requirement of filing statement in Form 27EQ is not correct. For that reliance is placed on the decision of Hon. Rajkot ITAT in case of Parag Makanbhai Parsana vs. ITO, TDS (Appeal No. 353/RJT/2018). Facts of the case are identical with the case of assessee where assessee has filed form 27C and hence, demand raised u/s 206C was deleted. The Hon. ITAT Rajkot, has deleted the late filing fees levied u/s. 234E on the ground that the assessee was not liable to file form 27EQ and hence, late filing fees was not leviable.

24. We note that the Co-ordinate Bench of ITAT, Jaipur in the case of Eid Mohammad Nizamuddin vs. ITO, [2020] 116 taxmann.com 579 (Jaipur-Trib.), wherein it was held that if a person responsible for collecting TCS does not collect tax or fails to pay it, he will be liable to pay interest for period till its payment; however, where his buyer has furnished return of income and paid tax, he will not be deemed to be an assessee in default and interest shall be payable for period till filing of return by such buyer. There is no mandatory requirement to pay any interest under section 206C(7) as part of certification in Form 27BA and information as to whether assessee has already paid interest or not has to specify in Form 27BA and it is only an information seeking requirement and not such a requirement in absence of which certification in Form 27BA will be invalid.

25. We also find that since the quantum has been deleted, therefore late fee, levied by the assessing officer, does not have any leg to stand. We note that assessing officer has passed order giving appeal effect dated 27.02.2019 (vide paper book page 32) wherein entire quantum addition made by the assessing officer was deleted. Hence, we find that the basic premise on which the Id CIT(A) sought to sustain the addition of the assessing officer completely fails. Once the foundation fails, the superstructure also fails i.e the addition also is to be deleted. In this regard, we rely on the legal maxim “*Sublato fundamento cadit opus*” (meaning thereby that foundation being removed, structure /work falls). Hence the initial action of the revenue itself is not in consonance with law, then all the subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. Therefore, we find that since the quantum addition has been deleted, therefore, penalty does not sustain. For that, reliance can be placed upon the judgment of Co-ordinate Bench of ITAT in ITA Nos. 347/Rjt/2018 & 3 Ors., Vishal Enterprise & 3 Ors., order dated 31.05.2019. Based on these facts and circumstances, we delete the addition sustained by Id. CIT(A) and allow the appeal of the assessee.

26. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 13 /01/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date:13/01/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Surat

6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot