IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR "SMC" BENCH : NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

ITA.Nos.241 & 242/NAG./2024
Assessment Years 2013-2014 & 2014-2015

Sainath Vidyalaya, Makkepalli, Chamorshi, GADCHIROLI – 442 605. PAN NGPSO9664E Maharashtra.	vs.	The Income Tax Officer, TDS Ward-52(3), Aaykar Bhawan, Nr. RTO Office, CHANDRAPUR – 442 401. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Mohd. Lakkadsha, C.A.
For Revenue :	Shri Abhay Y. Marathe, Sr. DR

Date of Hearing :	23.01.2025
Date of Pronouncement :	05.02.2025

ORDER

PER V. DURGA RAO, J.M. :

These assessee's twin appeals are directed against the order both dated 30.10.2023, of the learned CIT(A)-National Faceless Appeal Centre [in short "NFAC"], Delhi, relating to assessment years 2013-2014 and 2014-2015.

2. At the outset, there is a delay of 117 days in filing the above appeals before the Tribunal. I am satisfied with the contentions of the affidavit filed for condonation of delay and

petition. I, therefore, condone the delay of 117 days in filing the appeals before the Tribunal and proceed to decide the appeals on merits.

2. Briefly stated facts of the case assessment order that the assessee is running an educational institution viz., Sainath Vidyalaya Makkepalli entrusted by the Government. The Assessing Officer-TDS-CPC [TRACES] levied late fee u/sec.234E for filing the return belatedly beyond the due dates at Rs.1,03,400/- for the assessment year 2012-2013 and Rs.70,400/- for the assessment year 2013-2014 and confirmed by the learned CIT(A).

3. Coming to assessees' identical sole substantive grievance challenging the correctness of both the learned lower authorities' action levying late fees u/s 234E of the Act; involving varying sums, for delay in filing of TDS statement(s), there is hardly any dispute between the parties that this statutory provision itself carries prospective effect from 01.06.2015 whereas all these quarters / assessment years; as the case may be, in issue before us are well before the said date. That being the clinching fact, we find that the instant

issue is no more *res integra* in light of Tribunal's Coordinate Bench decision in ITA.Nos.651/PUN/2018 to 661/PUN/2018 and ITA.Nos.1018/PUN/2018 to 1028/PUN/2018's consolidated order dated 25.10.2018 reading as follows:

> *"11. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in ITA Nos.560/PN/2016 & 561/PN/2016, 1018/PN/2016 to 1023/PN/2016 in Maharashtra Cricket Association Vs. DCIT (CPC)-TDS, Ghaziabad,*

relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under:-

> *"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."*

12. The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education and Research Foundation in ITA Nos.1887 to 1893/PUN/2016 and others relating to assessment years 2013-14 and 2014-15 vide order dated 13.01.2017 and also in Swami Vivekanand Vidyalaya Vs. DCIT(CPC)-TDS (supra) and Medical Superintendant

Rural Hospital Vs. ACIT (CPC)-TDS in ITA Nos.2072 & 2073/PUN/2017, order dated 21.12.2017, which has been relied upon by the learned Authorized Representative for the assessee.

13. The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra) had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read as under:-

> *"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority*

would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f)

under Section 200A(1) should be treated as retroactive in character and not prospective.

22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."

14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide

para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.

15. In other words, the Hon'ble High Court of Karnataka explained the position of charging of late filing fees under section 234E of the Act and the mechanism provided for computation of fees and failure for payment of fees under section 200A of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under section 200A of the Act for computation and intimation for payment of late filing fees under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the Hon'ble High Court. In view of said proposition being laid down by the Hon'ble High Court of Karnataka (supra), there is no merit in observations of CIT(A) that in the present case, where the returns of TDS were filed for each of the quarters after 1st day of June, 2015 and even the order charging late filing fees was passed after June, 2015, then the same are maintainable, since the amendment had come into effect. The CIT(A) has overlooked the fact that notices under section 200A of the Act were issued for computing and

charging late filing fees under section 234E of the Act for the period of tax deducted prior to 1st day of June, 2015. The same cannot be charged by issue of notices after 1st day of June, 2015 even where the returns were filed belatedly by the deductor after 1st June, 2015, where it clearly related to the period prior to 01.06.2015.

16. We hold that the issue raised in the present bunch of appeals is identical to the issue raised before the Tribunal in different bunches of appeals and since the amendment to section 200A of the Act was prospective in nature, the Assessing Officer while processing TDS returns / statements for the period prior to 01.06.2015 was not empowered to charge late filing fees under section 234E of the Act, even in cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after June, 2015. Accordingly, we hold that intimation issued by Assessing Officer under section 200A of the Act in all the appeals does not stand and the demand raised by charging late filing fees under section 234E of the Act is not valid and the same is deleted.

17. Before parting, we may also refer to the order of CIT(A) in relying on the decision of Hon'ble High Court of Gujarat in Rajesh Kourani Vs. Union of India (supra). On the other hand, the learned Authorized Representative for the assessee has pointed out that the issue is settled in

favour of assessee by the Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra). Since we have already relied on the said ratio laid down by the Hon'ble High Court of Karnataka, the CIT(A) has mis-referred to both decisions of Hon'ble High Court of Karnataka and Hon'ble High Court of Gujarat; but the CIT(A) has failed to take into consideration the settled law that where there is difference of opinion between different High Courts on an issue, then the one in favour of assessee needs to be followed as held by the Hon'ble Supreme Court in CIT Vs. M/s. Vegetable Products Ltd. (supra), in the absence of any decision rendered by the jurisdictional High Court. The Hon'ble Bombay High Court in Rashmikant Kundalia Vs. Union of India (2015) 54 taxmann.com 200 (Bom) had decided the constitutional validity of provisions of section 234E of the Act and had held them to be ultra vires but had not decided the second issue of amendment brought to section 200A of the Act w.e.f. 01.06.2015. In view thereof, respectfully following the ratio laid down by the Hon'ble High Court of Karnataka and Pune Bench of Tribunal in series of cases, we delete the late filing fees charged under section 234E of the Act for the TDS returns for the period prior to 01.06.2015.

18. Further before parting, we may also refer to the order of CIT(A) in the case of Junagade Healthcare Pvt.

Ltd., where the CIT(A) had dismissed appeals of assessee being delayed for period of December, 2013 and July, 2014. The CIT(A) while computing delay had taken the date of intimation under section 200A of the Act as the basis, whereas the assessee had filed appeals before CIT(A) against the order passed under section 154 of the Act. The CIT(A) had noted that rectification application was filed in February, 2018 which was rejected by CPC on the same day. The CIT(A) was of the view that there was no merit in condonation of delay, wherein appeals were filed beyond the period prescribed. The assessee had filed appeals against the order passed under section 154 of the Act, hence the time period of appeals filed by assessee before the CIT(A) have to be computed from the date of order passed under section 154 of the Act and not from the date of issue of intimation. Thus, there is no merit in the order of CIT(A) in dismissing the appeals of assessee on this issue.

19. We find similar issue has been decided by us in the case of Medical Superintendent Rural Hospital Vs. ACIT(CPC)-TDS (supra) and vide para 15, order dated 21.12.2017 it was held as under:-

> *"15. Further, before parting, we may also refer to the order of the CIT(A) in these two appeals. The CIT(A) had dismissed the appeals of the assessee being delayed for a period of two and half years.*

The CIT(A) had taken the date of intimation under section 200A(3) dated 07-08-2014 and computed the delay in filing the appeal late before him. However, the assessee had filed the appeal before the CIT(A) against the order passed under section 154 of the Act. The said application for rectification under section 154 was filed on 08-06-2017/09-03-2017 in the respective years. The said application was decided by the Assessing Officer on 09-06-2017. The assessee filed an appeal against the dismissal of the rectification application filed under section 154 of the Act. The said fact is clear from the perusal of Form No.35 with special reference to Column 2(a) and 2(b). In the entirety of the above said facts and circumstances, we find no merit in the order of CIT(A) in the case of Medical Superintendent Rural Hospital, Surgana in dismissing the appeal in-limine being filed beyond the period of limitation. We have already decided the issue on merits in favour of assessee."

20. We have already decided the issue on merits in favour of assessee. Accordingly, the grounds of appeal raised by assessee in all appeals are allowed."

3. The Revenue could not file any case law to the contrary since the matter in issue has already stands considered in

the foregoing discussion, I, accordingly, accept the assessee's identical sole substantive ground in both these appeals. The impugned late filing fees sum(s) stands deleted.

No other ground has been pressed before me.

4. In the result, both the appeals of the assessee are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 05.02.2025.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Nagpur, Dated 05th February, 2025
VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Nagpur concerned
4.	The CIT, Nagpur concerned
5.	The D.R. ITAT, Nagpur SMC-Bench, Nagpur
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary : ITAT : Nagpur Bench
NAGPUR.