

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.57/Nag./2025
(Assessment Year : 2013-14)

Dr. Ambedkar Institute of Social Work
6, NW Kailash Nagar, Post Bhagwan Nagar
Manewada Road, Nagpur 440 027
PAN – AADTP1266E

..... Appellant

v/s

Income Tax Officer
Ward-1, Nagpur

..... Respondent

Assessee by : Ms. Shraddha Bavdekar
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 05/03/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

The present appeal has been filed by the assessee challenging the impugned order dated 13/12/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2020-21.

2. In its appeal, the assessee has raised following grounds:–

“1. That considering the facts & circumstance of the case, The Ld. National Faceless Appeal Center has erred in levying of late fees and interest of Rs. 16400/- & Rs.19,593/-respectively.

That the Ld. NFAC/CIT (A) have considered following judgements:

d) Hon'ble Karnataka High Court in the case of Fatheraj Singhvi Vs Union of India 289CTR 0602 (Kar) wherein it is held that section 200A of the Income Tax Act, 1961 is amended w.e.f. 01.06.2015 to provide for charging of late fee

u/s 234E. Also, as per the well-established principles of interpretation of statute, the provision shall have prospective effect unless it is expressly provided or impliedly demonstrated. Thus, it was held that the charging of late fee u/s 234E in the intimation passed u/s 200A is illegal and invalid. (Thus, The decision is in the favor of appellant)

e) Hon'ble Gujrat High Court in the case of Rajesh Kourani 83 taxmann.com 137 Wherein it was held that section 200A is a machinery provision and fee under section 234E can be levied even without a regulatory provision being found in section 200A for computation of fee. The Hon'ble High court held that the machinery provision in section 200A cannot override a charging provision in section 234E. (The decision is in favor of Revenue)

f) Hon'ble High court of Madras in the case of Conceria International (P.) Ltd. reported in [2023] 157 taxmann.com 335 (Madras)/[2024] 464 ITR 92 (Mad). Wherein the above two contradictory decisions were considered and it was held that section 234E is the substantive provision and late filing fee could be levied without any further provisions in section 200A. (The decision is in favor of Revenue)

2. There is a settled law that where there is a difference of opinion between different High Courts on an issue, then the one in favour of the assessee needs to be followed in the absence of any decision rendered by the jurisdictional High Court as held by the Hon'ble Supreme Court in CIT Vs Vegetable Products Limited (1973) 88 ITR 192. In view of this settled position of law, it is required to follow the decision of the Hon'ble Karnataka High Court in the case of Fateraj Singhvi (supra) which is in favour of the assessee. Further, it is noticed that the Hon'ble ITAT, Nagpur (jurisdictional Tribunal) held in the case of Padgilwar Agro Industries Vs ACIT, CPC TDS, Ghaziabad in ITA No.225/Nag/2019 vide order dated 31.01.2020 that the AO is not empowered to charge fee u/s 234E of the Act while processing TDS statements u/s 200A for the period prior to 01.06.2015. Hence, having regard to the decision of the Hon'ble Karnataka High Court in the case of Fateraj Singhvi and the decision of the Hon'ble Nagpur Tribunal (Jurisdictional Tribunal) in the case of Padgilwar Agro Industries, the levy of fee u/s 234E while processing the TDS statement u/s 200A of the Act for the period prior to 01.06.2015 is not legally tenable. Thus, it is seen from the above facts of the case that the Ld, NFAC/CIT (A) has ignored the decision of Hon'ble Supreme Court in CIT Vs Vegetable Products Limited (1973) 88 ITR 192 wherein it was held that where there is a difference of opinion between different High Courts on an issue, then the one in favour of the assessee needs to be followed in the absence of any decision rendered by the jurisdictional High Court. Thus in the instant case, as the decision of the jurisdictional High Court is not available and further considering the decision of Hon'ble ITAT Nagpur (Jurisdictional Tribunal), the appeal of the assessee shall be allowed and the error of charging late fee u/s 234 E of the act by passing intimation u/s 200A of the Act should be deleted.

Further, We reproduce our grounds of appeal as under:

3. That the sec.200A of the Act does not permit processing of TDS statement for default in payment of late fees, except any arithmetical error, or incorrect claim, or default in payment of interest, any TDS payable or refundable etc

before 01/06/2015. Hence late fees for TDS quarterly statement cannot be recovered by way of processing under section sec 200A. Therefore, demand notice cannot be issued under this section, but if issued, then it is illegal. Hence liable to be cancelled.

4. Section 200A has been amended w.e.f. 01/06/2015 to pass order u/s.200A for the purpose of levying late fees U/S.234E for TDS statements which were due to be filed on or after 1-6-2015 &for TDS deducted on or after 1-6-2015 & thus it is clear that orders levying late fee u/s 234E passed for TDS statement which were due to be filed before 1-6-2015 & for TDS deducted before 01/06/2015 are wrong, unlawful and beyond jurisdiction hence liable to be quashed and late fee should be deleted in view of various High Court and tribunal judgments of coordinate benches also.

5. That the TDS statement has been processed u/s 200A by TDS-CPC, whereas as per sec 200A (2), CBDT has not and cannot authorize TDS-CPC to levy late fee. Therefore, levy of late fee is beyond jurisdiction.

6. That the interest has been charged on the amount of 234E, whereas late fee is not an amount of tax. Therefore, interest charged on late fee is unlawful and wrong hence liable to be cancelled.

7. That the appellant craves leave to add, amend or withdraw any of the grounds of appeal."

3. The assessee is an Educational Institute which offers BSW and MSW courses in the Nagpur city of Maharashtra State. The college is funded by the State Government of Maharashtra which receives its salary and non-salary the said grant from State Government. The assessee is being run under Public Welfare Society which is a society registered under the Societies Registration Act, 1860. The assessee has been regularly complying with the provisions of deduction of tax at source and depositing the same to the account of Central Government. On 28/08/2013, the assessee filed TDS return under section 206 of the Income Tax Act, 1961 ("the Act") for the second quarter of financial year 2012-13 (Form 24Q). The due date for filing of return was 15/10/2012. There was delay of 317 days in filing of return of income. The original TDS statement so filed by the assessee was processed under section 200A of the Act on 13/11/2013 and thereafter the assessee revised TDS

statement to correct few irregularities and the revised TDS statement which was processed on 10/04/2022, wherein demand was raised for late fees under section 234E for ₹ 16,400, and interest thereon under section 220(2) of ₹ 19,593.

4. The learned CIT(A) confirmed the assessment order so passed by the Assessing Officer.

5. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. Both the parties agree before us that the issue for our adjudication is squarely covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, rendered in Bank of India v/s ACIT, ITA no.93/Nag./2023, etc., for A.Y. 2013-14, vide order dated 01/05/2024, wherein, the Tribunal, on identical set of facts and grounds decided the issue in favour of the assessee and against the Revenue by holding as follows:-

"7. 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 2013-14 and 2014-15. 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 (supra) 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 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 assessee. The issue has been challenged before various Courts by the assessee 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 assessee has 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 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."

8. We find that the above decision of the Co-ordinate Bench in *S.S.S. Construction (supra)* is 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 assessee's own case 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 are of the opinion that the impugned orders passed by the learned CIT(A) for all the assessment years under consideration deserve to be reversed.

9. Insofar as the arguments of the learned D.R. in case of *DIGP Group Centre CRPF (supra)* is concerned, we find that it relates to the assessment year 2016-17, 2017-18, 2018-19 and 2019-20, whereas, the present appeal relates to the assessment year 2013-14 and 2014-15 and hence, the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, Nagpur, relied upon by the learned D.R. has no application to the facts of the present case for the assessment year under consideration and thus the arguments of the learned D.R. is rejected. Consequently, the impugned orders passed by the learned CIT(A) for all the years under consideration are hereby reversed and the grounds raised by the assessee in this appeal are allowed.

10. In the result, appeals filed by the assesseees are allowed."

12. Since the issue for our adjudication is squarely covered by the aforesaid decision of the Tribunal rendered wherein the very same Bench decided

identical issue in favour of the assessee and against the Revenue for the reasons stated therein, consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) on this issue by allowing the ground of appeal raised by the assessee.

6. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

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