

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपीलसं./ ITA No. 111/Agr/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)

Shri Kamlesh Katare 79, Jotinagar, Thatipur Morar, Gwalior	बनाम/ Vs.	ITO (TDS) Gwalior
स्थायीलेखासं./जीआइआरसं./PAN/GIR/TAN No. BPLK-03165-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Ashok Vijaywargiya, CA- Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Shailendra Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	13-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	28-03-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aggrieved by levy of late filing fees u/s 234E qua TDS return in Form 26Q for 4th Quarter of financial year 2012-13, the assessee is in further appeal before us.
2. From the records, it emerges that the assessee was saddled with later filing fees u/s 234E for Rs.22,800/- while processing TDS return as filed by the assessee. The assessee sought rectification thereof u/s 154 which was rejected by Ld. AO. Aggrieved, the assessee filed further appeal which met with no success. Aggrieved, the assessee is in further appeal before us.

3. We find that this issue stand covered in assessee's favor by the decision of Hon'ble Karnataka High Court in the case of **Fatehraj Singhvi vs UOI (73 Taxmann.com 252)** holding that the amendment in Section 200A came into effect only on 01-06-2015 and the same would have prospective effect. Therefore, there could not be any levy of fee for late filing fee u/s 234E of the Act while issuing intimation u/s 200A prior to 01-06-2015. The relevant findings of the Hon'ble Court were as under:-

"26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of section 234E of the Act. Save and except to observe that the question of constitutional validity of section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under section 200A of the Act for computation and intimation for payment of fee under section 234E as they relate to for the period of the tax deducted prior to 1-6-2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under section 234E already made as per demand/intimation under section 200A of the Act for the TDS for the period prior to 1-4-2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge."

It was thus held that amendment u/s 200A was prospective in nature and therefore, no computation of fee for demand or intimation u/s 200A could be made for the TDS deducted for the respective Assessment Years prior to 01-06-2015.

4. The revenue has quoted the decision of Hon'ble High Court of Gujarat in the case of **Rajesh Kourani vs. UOI (83 Taxmann.com 137)** which has taken a contrary view. Since no decision of jurisdictional High court is been shown to us, we follow the analogy of

decision of Hon'ble Supreme Court rendered in **CIT vs. Vegetable products Ltd. (1972 88 ITR 192)** to hold that in case of two reasonable constructions of taxing statutes, the one that favors the assessee must be adopted. Accordingly, we direct Ld. AO to delete the impugned fees and revise the demand as raised against the assessee.

5. The appeal stand allowed in terms of our above order.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/- (SATBEER SINGH GODARA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखा सदस्य / ACCOUNTANT MEMBER
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Dated: 28-03-2025

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA