

IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

SHRI M. BALAGANESH, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 338/MUM/2022
(Assessment Year: 2013-14)

ITA No. 337/MUM/2022
(Assessment Year: 2014-15)

&

ITA No. 339/MUM/2022
(Assessment Year: 2015-16)

Krishna Pandurang Kobnak,
3-B, 3-B, Surya Darshan Tower,
ESIS Hospital, Thane - 400604
[PAN: AABPK6026H]

..... Appellant

National Faceless Appeal Centre,
Ghaziabad, Delhi

Vs

..... Respondent

For the Appellant/Assessee	:	Shri Ishaan Patkar
For the Respondent/Department	:	Shri Tejinder Pal Singh
Date of conclusion of hearing	:	18.07.2022
Date of pronouncement of order	:	14.10.2022

ORDER

Per Bench:

1. These are three appeals by the Assessee. The solitary identical issue raised in all the appeals is directed against the levy of fee under Section 234E of the Income Tax Act, 1961 ('the Act'). All the appeals were, therefore, taken up together and are being disposed by way of this common order. The appeals are taken as being filed within limitation in view of the order dated 10.01.2022 passed by the Hon'ble Supreme Court in suo moto Writ Petition (C) No. 3 of 2022.

ITA No. 338/Mum/2022 (Assessment Year 2013-14)

2. This is the appeal preferred by the Appellant/Assessee against the order of the Commissioner of Income Tax (Appeals)-National

Faceless Appeals Centre [hereinafter referred to as 'the CIT(A)'] dismissing appeal wherein the Appellant/Assessee had called into question the correctness the levy of late fees under Section 234E of the Act by way of intimation issued under Section 200A of the Act on processing of Statement of Tax Deducted at Source ['TDS Statement' in short] of third quarter of Financial Year 2012-13 relevant to the Assessment Year 2013-14.

3. The Appellant has raised the following grounds of appeal:

"1. Ground 1) The learned CIT(A) erred in confirming the levy of late Fees U/s 234-E at Rs. 40,000/- on TDS Statement 26Q for Quarter 3 (Oct 12-Dec 12) of A.Y. 2013-14 filed beyond due date on the basis of various court judgments in favour of the Revenue prior to 01/06/2015. It is prayed that the levy of late fees prior to 01/06/2015 be directed to be deleted"

4. The relevant facts, in brief, are that the Appellant was under obligation to deduct tax at source in respect of amounts paid/payable to various parties and file quarterly TDS Statement in respect of the same. Admittedly, in the present set of appeals, the Appellant filed the TDS Statement/Revised Statement for the third quarter of the financial year 2012-13 relevant to Assessment Year 2013-14, belatedly. The Assessing Officer while processing the TDS Statement issued intimation to the Appellant under Section 200A of the Act and levied late filing fee of INR 40,000/- under Section 234E of the Act. The Appellant preferred appeal before CIT(A) which was dismissed. Being aggrieved, the Appellant is in appeal before us.
5. We have considered the rival submissions and perused the material on record. The Ld. Authorised Representative for the Appellant placed reliance upon the following judgments/decisions:

- Fatehraj Singhvi vs. UOI (2016) 289 CTR (Kar) 602
- Medical Superintendent Rural Hospital vs. DCIT (2018) 173 ITD 575 (Pune-ITAT)
- K.D. Realities Pvt. Ltd. vs. CIT (2019) SCC OnLine ITAT 21609
- Permanent Magnets Ltd. vs. CIT (2019) SCC OnLine ITAT 20844
- Udit Jain vs. Cit (2019) SCC OnLine ITAT 23001

6. Per contra, the Ld. Departmental Representative relied upon the order passed by the CIT(A) and the judgment of Hon'ble Gujarat High Court in the case of Rajesh Kourani Vs. Union of India : [2017] 297 CTR 502 (Gujarat).

7. We have heard the rival submissions and perused the material on record. In the case of Medical Superintendent Rural Hospital Vs. DCIT, CPC (TDS), Ghaziabad [ITA No. 651 to 661 and 1018 to 1028 (Pun) of 2018, Pronounced on 25.10.2018] it was held by the Tribunal as under:

"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 1 st 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 *Rashmikanth 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." (Emphasis Supplied)

8. The Mumbai Bench of the Tribunal has, in the case of K.D. Realities Pvt. Ltd. Vs. CIT(Appeals)-1, Thane: [ITA Nos.6499 to 6502/Mum/2018, Assessment Years: 2013-14 to 2016-17, pronounced on 15.11.2019], has held as under:

"6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Admittedly, it is a matter of fact borne from the records, that the assessee had delayed the filing of the statements of tax deduction at source in "Forms 26Q/24Q" for the aforementioned quarters pertaining to the captioned years under consideration i.e A.Y. 2013-14, 2014-15, A.Y. 2015-16 and A.Y 2016-17. We find that the Hon'ble High Court of Karnataka in the case of Fatehraj Singhvi Vs. Union of India (2016) 289 CTR 602 (Kar), had concluded, that the notice under Sec.200A of the Act computing fee under Sec.234E, to the extent the same related to the period of the tax deduction prior to 01.06.2015 was liable to be "set aside". The aforesaid judgment of the Hon'ble High Court of Karnataka had, thereafter, been relied upon by the ITAT, Chandigarh in the case of Sonalac Paints & Coating Ltd. Vs. DCIT (2018) 167 DTR 83 (Chd), wherein it was observed as under:-

"In the aforesaid case it was observed by the Tribunal that levy of fees under Sec.234E while processing the TDS returns under Sec.200A prior to 01.06.2015 was without any authority of law. On the basis of its aforesaid observations, the Tribunal had concluded that the fees levied under Sec.234E prior to 01.06.2015 in the intimations made under Sec. 200A was without authority of law and the fees therein levied was liable to be deleted. Apart therefrom, we find that the issue involved in the appeal before us is also covered by an order of the ITAT, Amritsar in the case of Tata Rice Mills Vs. ACIT (CPC), TDS Ghaziabad (ITA No. 395/ASR/2016; dated 25.10.2017. In the aforementioned case, it was observed by the Tribunal that the assessee had filed its statement of tax deduction at source for the "second quarter" relevant to Financial year 2014- 15 on 19th June, 2015, which was thereafter processed on 23.06.2015 by the ACIT-TDS, CPC and a late fee under Sec. 234E of Rs. 49,400/- was charged in the intimation issued under Sec. 200A of the I.T. Act. It was observed by the Tribunal that as the amendment made under

Sec.200A was effective from 01.06.2015 and applicable prospectively, hence no computation of fee under Sec.234E could be made for the TDS deducted prior to 01.06.2015.

7. We have given a thoughtful consideration to the issue before us and finding ourselves as being in agreement with the view taken by the Tribunal in the case of Tata Rice Mills (supra), hence are of the considered view that the ACIT-TDS, CPC Ghaziabad in the case before us had erred in levying fees under Sec.234E in respect of tax deducted at source for the four quarters prior to 01.06.2015 in respect of the captioned years viz. A.Y. 2013-14, 2014-15 and A.Y.2015-16. We thus not being persuaded to subscribe to the view taken by the CIT(A) who had upheld the levy of fees by the A.O, thus set aside his order and vacate the demand raised by the A.O under Sec.234E in the hands of the assessee for all the four quarters for the year under consideration.”

7. As regards the levy of fees under Sec.234E for A.Y. 2016-17 is concerned, we find that as the statements of TDS for the first quarter therein involved was to be filed latest by 15.07.2015, i.e. subsequent to the cut off period of 01.06.2015 (the date on which the section enabling levy of fees under Sec.234E was made available in Sec.200A), therefore, no infirmity arises from the imposition of the aforesaid fees in the hands of the assessee. In fact, as observed by us hereinabove, the Id. A.R had admitted that he is not assailing the levy of fees under Sec.234E insofar the delay involved in filing of the statement of TDS for A.Y. 2016-17 is concerned. Accordingly, we are of the considered view that in terms of our aforesaid observations the fees levied by the ACIT, CPC, Ghaziabad under Sec.234E for A.Y. 2013-14, 2014-15 and A.Y. 2015-16 cannot be sustained and is thus deleted. On the other hand, finding no infirmity in the order of the ACIT, CPC as regards levy of fees under Sec.234E for A.Y. 2016- 17, we uphold the same.

8. Resultantly, the appeals of the assessee for A.Y. 2013-14 in ITA No. 6499/Mum/2018, A.Y. 2014-15 in ITA No.6500/Mum/2018 and A.Y. 2015-16 in ITA No. 6501/Mum/2018 are allowed in terms of our aforesaid observations. The appeal of the assessee for A.Y. 2016-17 in ITA No.6502/Mum/2018 is dismissed.” (Emphasis Supplied)

In the above decision the Tribunal has deleted the late fee levied under Section 234E of the Act in respect of the quarterly TDS statements filed for the financial years relevant to Assessment

Years 2013-14 to 2015-16 holding that the Hon'ble High Court of Karnataka in the case of Fatehraj Singhvi Vs. Union of India (supra), had concluded, that the notice under Sec.200A of the Act for computing late fee under Section 234E of the Act, to the extent the same related to the period of the tax deduction prior to 01.06.2015 was liable to be set aside.

9. To the same effect are the decisions of the Mumbai Bench of the Tribunal in the case of M/s National Laminate Corporation V/s ITO (ITA No. 4902/Mum/2018 dated 10/12/2019), Lawmen Concepts Pvt. Ltd. Vs. Dy.CIT, CPC-TDS: ITA No. 5140-5143/Mum/2018 [10.01.2020] and Shri Vivek J Thar, legal heir and son of Shri Jayesh Thar vs. ITO-TDS Ward, Kalyan [ITA No. 1476/Mum/2022 to 1479/Mum/2022, Assessment Year 2013-14, pronounced on 19.09.2022] wherein the Tribunal has, following the judgment of the Karnataka High Court in the case of Fatehraj Singhvi (supra), deleted the late fee levied under Section 234E of the Act.
10. Respectfully following the above decision of the Tribunal, we delete levy of late fees of INR 40,000/- for Assessment Year 2013-14, demanded under Section 234E of the Act. Ground No. 1 raised in the appeal is allowed. In result the present appeal is allowed.

ITA No. 337/Mum/2022 (Assessment Year 2014-15)
ITA No. 339/Mum/2022 (Assessment Year 2015-16)

11. The appeals for the Assessment Year 2014-2015 and 2015-16 involve issues identical to the issue raised in appeal for the Assessment Year 2013-14. Accordingly, in view of the reasoning/finding giving in paragraph 7 to 10 above, Ground No.1 raised in the respective appeals for the Assessment Year 2014-15 and 2015-16 are allowed. Late fees of INR 2,00,855/- for

Assessment Year 2014-15, and INR 2,08,050/- for Assessment Year 2015-16 demanded under Section 234E of the Act is deleted. Ground No. 1 raised in the respective appeals are allowed. Accordingly, both the appeals are allowed.

In result, all the three appeals filed by the Assessee are allowed.

Order pronounced on 14.10.2022.

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 14.10.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai