

आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "ए", चण्डीगढ  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA Nos. 35 & 38/Chd/2022  
निर्धारण वर्ष / Assessment Year : 2014-15

Batra Exports C/o J K Gupta, Advocate 4702, Hospital Bazar, Bathinda Punjab- 151005	बनाम	DCIT, TDS Ludhiana
स्थायी लेखा सं./PAN NO:		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri J.K. Gupta, Advocate  
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

सुनवाई की तारीख/Date of Hearing : 05/02/2024  
उद्घोषणा की तारीख/Date of Pronouncement : 07/02/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

Both the above appeals have been filed by the Assessee against the respective order of the Ld. CIT(A)/NFAC, Delhi each dt. 03/12/2021 pertaining to Assessment Year 2014-15.

2. Both the above appeals were heard together and are being disposed off by this consolidated order.

3. At the outset, it is noted that there is delay in filing both the appeals by a day. After considering the affidavit submitted by the assessee, we find that there was reasonable cause for the delay, the same is hereby condoned and both the appeals are admitted for adjudication.

4. In ITA No. 35/Chd/2022 for A.Y 2014-15 , the assessee has raised the following grounds of appeal:

“1. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in upholding the fee u/s 234E imposed on assessee by the DC IT (TDS), Ludhiana.

2. That on the facts and in the circumstances of the case and in law, the impugned notices u/s 200A of the Act for computation and intimation for payment of fee cannot be issued as the TDS returns relate to quarter ending before 01.06.2015. So, the fee imposed is liable to be quashed.

3. That not only TDS was paid before 01.06.2015 but also TDS Return was filed before 01.06.2015. So, the fee u/s 234E cannot be charged while processing the TDS Return. So, the fee imposed is liable to be quashed.

4. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in not following Para No. 47.3 and 47.20 of Circular No. 19 of 2015 Dated 27.11.2015 379 ITR (St.) 19 being Explanatory notes to the provisions of Finance Act. 2015 which clearly provides that this provision be applicable w.e.f. 01.06.2015 not to the earlier assessment years as the existing provisions of section 200A of Income tax Act. 1961 did not provide for determination of fee payable u/s 234 E of the Act at the time of processing of TDS statements. So, the appeal of the assessee is liable to be accepted. Even this Circular was not distinguished and was not referred to in the decision. So, the fee imposed is liable to be quashed.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in, not following the judgment of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & Others vs UOI reported at 289 CTR 602, which is higher in authority than ITAT. Reliance is also placed on UOI vs Kamlaksmi Finance Ltd AIR 1992 SC 711, directly on the issue, for judicial discipline. Even, this judgment was not distinguished and was not referred to in the decision. So, the fee imposed is liable to be quashed.

6. That any other relief may kindly be granted to the assessee to whom he is found entitled at the time of hearing of appeal.”

5. Similar grounds of appeal have been taken by the assessee in ITA no. 38/CHD/2022.

6. During the course of hearing, the Ld. AR submitted that the matter may be decided based on the written submission submitted on behalf of the assessee and the contents thereof read as under:

“1. That these appeal were filed on 02.02.2022 by assessee against the order passed by CIT(A), NFAC, Delhi vide order Dated 03.12.2021.

Brief Facts:

2. That the brief facts of the case are that the assessee is a partnership firm and the person responsible is a partner of Firm Batra Exports, Jalalabad West and filed Form No. 26Q (2<sup>nd</sup> quarter) (01.07.2013 to 30.09.2013) for interest on 03.01.2015 and Form No. 26Q (4<sup>th</sup> quarter) (01.01.2014 to 31.03.2014) for interest on 02.01.2015. That the above returns were filed before any notice issued by department but voluntarily and while processing TDS returns the AO charged fee u/s 234E for filing late TDS returns.

That the late fees detail for Form No. 26Q is as under:

	<u>Amount</u>	<u>Section</u>	<u>FY Quarter</u>	<u>Due Date</u>	<u>Date of filing</u>
i)	Rs. 90400/-	234E	2013-14/Q2	15.10.2013	03.01.2015
ii)	Rs. 37,886/-	234E	2013-14/Q4	31.05.2014	02.01.2015

3. That the assessee filed the first appeal before the CIT(A), NFAC, Delhi which was dismissed on 03.12.2021.

4. That aggrieved with the decision of CIT(A), NFAC, Delhi the assessee has filed this appeal before the Hon'ble Bench.

CONDONATION OF DELAY:

5. That there is a delay of 1 day in filing appeal. The application for condonation of delay along with affidavit from assessee is filed before the Bench on 20.02.2023. So, keeping in view of Covid pandemic and the decision of Supreme Court in the case of IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION reported at 441 ITR 722 (SC) the delay may kindly be condoned. In view of the aforesaid judgment of the Hon'ble SC there is no delay.

6. That the assessee has raised Ground No. 1 - 6 of Appeal as under:-

"1. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in upholding the fee u/s 234E imposed on assessee by the DCIT (TDS), Ludhiana.

2. That on the facts and in the circumstances of the case and in law, the impugned notices u/s 200A of the Act for computation and intimation for payment of fee cannot be issued as the TDS returns relate to quarter ending before 01.06.2015. So, the fee imposed is liable to be quashed.

3. That not only TDS was paid before 01.06.2015 but also TDS Return was filed before 01.06.2015. So, the fee u/s 234E cannot be charged while processing the TDS Return. So, the fee imposed is liable to be quashed.

4. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in not following Para No. 47.3 and 47.20 of Circular No. 19 of 2015 Dated 27.11.2015 379 ITR (St.)

19 being Explanatory notes to the provision of Finance Act, 2015 which clearly provides that this provision be applicable w.e.f. 01.06.2015 not to the earlier assessment year as the existing provisions of section 200A of Income tax Act, 1961 did not provide for determination of fee payable u/s 234 E of the Act at the time of processing of TDS statements. So, the appeal of the assessee is liable to be accepted. Even, this Circular was not distinguished and was not referred to in the decision. So, the fee imposed is liable to be quashed.

5. That on the facts and in the circumstances of the case and in law, the learned CIT(A), National Faceless Appeal Centre, Delhi erred in not following the judgment of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & Others vs UOI reported at 289 CTR 602 which is higher in authority than IT AT. Reliance is also placed on UOI vs Kamlaksmi Finance Ltd. AIR 1992 SC 711 directly on the issue for judicial discipline. Even, this judgment was not distinguished and was not referred to in the decision. So, the fee imposed is liable to be quashed.

6. That any other relief may kindly be granted to the assessee to whom he is found entitled at the time of hearing of appeal"

That section 234E has been inserted in section 200A prospectively by the Finance Act, 2015 (Act No. 20 of 2015) w.e.f. 01.06.2015. So, the amended law would be applicable for the period only w.e.f. 01.06.2015 and prior to that period fee u/s 234E cannot be charged while processing the return of TDS u/s 200A of the Act.

In this connection your kind attention is invited to Para No. 47.3 and 47.20 of Circular No. 19 of 2015 Dated 27.11.2015 379 ITR (St.) 19 being Explanatory notes to the provision of Finance Act, 2015 which clearly provides that this provision be applicable w.e.f. 01.06.2015 not to the earlier assessment year as the existing provisions of section 200A of Income tax Act, 1961 did not provide for determination of fee payable u/s 234E of the Act at the time of processing of IDS statements. Therefore, the provisions section 200A of the Act has been amended, so, as to enable computation of fee payable u/s 2.141 of the Act at the time of processing of IDS statements u/s 200A of the Act. Accordingly, fee of Rs. 90400/- and 37886/- charged u/s 200A for the period prior to 01.06.2015 while processing the return is liable to be deleted.

That the case of the assessee is directly covered by the latest decision of Hon'ble Chandigarh Bench in the group case of Himachal Pradesh Gramin Bank Vs The ITO (TDS) 11A No. 105/CHANDI/2022 AY 2013-14 Dated 16.06.2022 wherein late fees charged u/s 234E has been deleted for the period prior to 01.06.2015 on the basis of Fatheraj Singhvi & Others vs I'01 reported at 289 CTR 602 (Karnataka) wherein it was held that we find that substitution made by clause (c) to (r) of sub section (1) of section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand u/s 200A for computation and intimation for the payment of fee u/s 234E could not be made in purported exercise of power u/s 200A by the respondent for the period of the respective assessment year prior to 01.06.2015..." That Hon'ble High Court also overruled Lakshmi Nirman Bangalore (P) Ltd. vs DOT 5 ITR OL 279 (Kar).

After the aforesaid judgment of the Hon'ble Bench, the following judgments of the Hon'ble High Courts of Karnataka and Kerala are reported which are in favour of the assessee:-

- i) Sark Cables (P) Ltd., vs ITO 142 [taxmann.com](#) 30 (Ker.)
- ii) Amaravati vs ITO 142 [taxmann.com](#) 81 (Ker.)
- iii) Nila Bakers & Confectioneries (I) (P) Ltd.. vs ITO (TDS) 139 [taxmann.com](#) 535 (Ker.)
- iv) Atlas Brands (P) Ltd., vs CIT (TDS) 137 [taxmann.com](#) 191 (Kar.)
- v) Jigi Varghese vs ITO (TDS) 443 ITR 267 (Ker.)
- vi) Olari Little Flower Kurries (P) Ltd., vs UOI 440 ITR 26 (Ker.)
- vii) United Metal vs ITO (TDS) 137 [taxmann.com](#) 115 (Ker.)
- viii) Eurotech Maritime Academy (P) Ltd., vs ITO (TDS) 137 [taxmann.com](#) 63 (Ker.)

That there is also one judgment of Hon'ble Calcutta Bench of the IT AT in favour of the assessee in the case of Bhaskar Roy vs ITO 193 1TD 668 (Kol. Trib.).

If there is any adverse decision against the assessee on the aforesaid issue, then one in favour of assessee should be followed. Reliance is placed on CIT vs Vegetable Products Ltd. 88 ITR 192 (SC) and UOI and Others vs Kamalakshi Finance Corporation reported at AIR 1992 SC 711 (SC) directly on this issue.

There is no decision against the assessee of the Hon'ble Punjab and Haryana High Court. It is, therefore, requested that the fee is liable to be quashed."

7. The Id DR is heard who has relied on the order passed by the Id CIT(A) and the intimation issued by the CPC. It was submitted that there has been delay in filing the TDS returns and at the time of processing of the TDS returns on 01/01/2017, the AO/CPC has the requisition jurisdiction to levy late filing fees u/s 234E of the Act.

8. We have heard the rival contentions and perused the material available on the record. We had an occasion to examine similar issue in case of Gita Star Hotels & Resorts Private Ltd., Jaipur vs. DCIT, CPC, TDS, Ghaziabad (*in ITA No. 14/JP/2017 dated 29.10.2018*) where, speaking through one of us, it was held as under:

"8. We have heard the rival contentions and perused the material available on record. In the present case, the undisputed facts are that the assessee filed its TDS return (Form 26Q) for the fourth quarter of financial year 2012-13 on 26.12.2012 and the same was processed and intimation under section 200A was issued vide order dated 15.12.2013 much prior to the amendment to section 200A of the Act w.e.f. 1.6.2015 empowering the Assessing officer levying the fees under

*section 234E of the Act. It is therefore not a case of continuing default where the assessee has defaulted in furnishing the TDS statement even after 1.6.2015 and thereafter, the demand for payment of fees under section 234E has been raised by the Assessing officer. In case of Fatheraj Singhvi (supra), the Hon'ble Karnataka High Court has held that the provisions of amended section 200A are prospective in nature. Further, the decision of the Hon'ble Rajasthan High Court in case of M/s. Dundlod Shikshan Sansthan and Others (supra) as relied by Id. CIT (A) is in the context of validity of section 234E, but not in the context of power of AO for levy of fee under section 234E prior to 1.6.2015. In view of the above, the Assessing Officer while processing the TDS statements for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted."*

9. In the aforesaid decision, the TDS return (Form 26Q) for the fourth quarter of financial year 2012-13 was filed by the assessee on 26.12.2012 and the same was processed and intimation under section 200A was issued on 15.12.2013 much prior to the amendment to section 200A of the Act w.e.f. 1.6.2015 empowering the Assessing officer levying the fees under section 234E of the Act. In that factual background, it was held that it was not a case of continuing default where the assessee has defaulted in furnishing the TDS statement even after 1.6.2015 and therefore, the demand for payment of fees under section 234E was deleted.

10. Subsequently, in another case in case of M/s Ajmer Thermotech Pvt. Ltd. vs ACIT, CPC, TDS, Ghaziabad (*in ITA No. 763/JP/2017 dated 23.01.2019*) where, again speaking through one of us, it was held as under:

*"8. In the instant case, the assessee filed its TDS return in Form No. 24Q for the quarter ended 31st March, 2015 on 12th September, 2015 and the same was processed and an intimation dated 18th September, 2015 was issued by the AO u/s 200A of the Act. Thus, both the filing of the return of income by the assessee and processing thereof has happened much after 1.6.2015 i.e, the date of assumption of jurisdiction by the AO u/s 200A(1)(C) to levy fees under section 234E of the Act. Even though the quarterly return pertains to quarter ended 31.3.2015, the fact remains that there is a continuing default even after 1.6.2015 and the return was actually filed on 12.09.2015. The said provisions cannot be read to say that where an assessee file his return of income for the period falling after 1.6.2015 and there is a delay on his part to file the return in time, he will suffer the levy of fees, however, an assessee who has delayed the filing of the return of income even pertaining to the period prior to 1.06.2015, he can be absolved from such levy even though there is a continuous default on his part even after 1.6.2015. In our view, the AO has acquired the jurisdiction to levy the fees as on*

*1.06.2015 and therefore, any return filed and processed after 1.6.2015 will fall within his jurisdiction where on occurrence of any default on part of the assessee, he can levy fee so mandated u/s 234E of the Act. Therefore, irrespective of the period to which the quarterly return pertains, where the return is filed after 1.6.2015, the AO can levy fee under section 234E of the Act. At the same time, in terms of determining the period for which fees can be levied, only saving could be that for the period of delay falling prior to 1.06.2015, there could not be any levy of fees as the assumption of jurisdiction to levy such fees have been held by the Courts to be prospective in nature. However, where the delay continues beyond 1.06.2015, the AO is well within his jurisdiction to levy fees under section 234E for the period starting 1.06.2015 to the date of actual filing of the TDS return. In light of the same, in the instant case, the levy of fees under section 234E is upheld for the period 1.06.2015 to the date of actual filing of the TDS return which is 12.09.2015 and the balance fee so levied is hereby deleted. In the result, the ground of appeal is partly allowed."*

11. In light of aforesaid discussion, what need to be examined in the instant case is the time of the filing of the TDS returns and whether it is a case of continued default even after the period starting 1.6.2015 empowering the Assessing officer to levy the fees under section 234E of the Act. The undisputed facts which are emerging from the records is that in the first case, the TDS return (Form 24Q) for the 2nd quarter of financial year 2013-14 was filed by the assessee on 3.01.2015 and the same was processed and intimation under section 200A was issued on 01/01/2017. Similarly, in the second case, the TDS return (Form 24Q) for the 4th quarter of financial year 2013-14 was filed by the assessee on 02.01.2015 and the same was processed and intimation under section 200A was issued on 01/01/2017. We therefore find that though there has been a delay in filing these two TDS returns, however, in all these cases, the TDS return has been filed much before 1.6.2015 and none of the three cases involved a case of continuing default where the assessee has defaulted in furnishing the TDS statement even after 01.06.2015. Therefore, even though the AO assume jurisdiction to levy fee u/s 234E with effect from 1.6.2015 and has the necessary jurisdiction to levy fee u/s 234E in the instant case while processing the TDS returns on 1/01/2017, at the same time, such jurisdiction has been held prospective in nature and the period prior to 1/6/2015 has to be excluded. In light of above discussion and in the entirety of facts and circumstances of the

case, there is no basis for levy of fees under section 234E and the same is hereby directed to be deleted in both the cases.

12. In the result, both the appeals are allowed.

Order pronounced in the open Court on 07/02/2024

Sd/-

आकाश दीप जैन  
(AAKASH DEEP JAIN)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 07/02/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar