IN THE INCOME-TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA

Before: Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member

S.No.	ITA No.	Appellant	Respondent	PAN/TAN
1-2	414-415/Agr/2018 A.Y.2013-14	M/s Yasoda Grah Nirman Sahkari Sanstha Maryadit, Gwalior	ITO (TDS), City Center, Gwalior	AAATY 2760 R BPLY00265G
3-4.	474-475 /Agr /2018 A.Y.2013-14 to 2014-15	Engineer's Circle Education Private Ltd., 1-27, Site No.1, City Center, Gwalior (M.P.)	ITO (TDS), City Center, Gwalior	AACCE 7022 K BPLE00988B
5 to 15	478- 488/ Agr/2018 AYs 2013-14 to 2015-16	M/s Bharti Buildcon, C-3, Govindpuri, Thatipur, Gwalior (M.P.)	ITO (TDS), City Center, Gwalior	AAKFB 8078 M BPLB04301D
16 to 26	489 – 499 / Agr/ 2018 AY 2014-15 to 2015-16	M/s Rajkumar Singh Chauhan Contractor Kamal Singh Ka bagh, Shinde Ki Chhawani, Lashkar, Gwalior (M.P.)	ITO (TDS), City Center, Gwalior	AAGFR 2143 F BPLR03259E
27 to 34	500- 507 / Agra / 2018 AY 2014-15 to 2015-16	S.R.S. Vizcon Pvt. Ltd., Gwalior	ITO (TDS), City Center, Gwalior	AARCS2090Q BPLS1427F
35 to 40	508-513/ Agr /2018 A.Y.2013-14 to 2015-16	Smt. Pragya Sharma, E-25, New vivekanand Colony, Near Balwant Nagar, Thatipur, Gwalior (M.P.)	ITO (TDS), City Center, Gwalior	CPXPS1857R BPLP05173A
41 to 45	514-518 /Agr / 2018 A.Y.2013-14 to 2015-16	M/s Rama Shankar Dixit, 67, Indra nagar, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	BIWPD 9383 G BPLR06172F
46-47	519-520/Agr / 2018 A.Y 2015-16	S.R.S. Thermax, 610, Millenium Plaza, Govindpur, Gwalior	ITO (TDS), City Center, Gwalior	AASCS9672H BPLS14681C
48-49	521-522/Agr / 2018 A.Y 2013-14 to 2014-2015	Sh. Ram Niwas Sharma, E-25, New Vivekanand Colony, Near Balwant Nagar, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	ARQPS5740J BPLR05403G

50-52	523-525/Agr / 2018 A.Y 2013-14 to 2014-2015	M/s Singh & Singh Construction,305, Sindhiya Enclave, Darpan Colony, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	ABGFS2481J BPLS10401G
53-54	526-527/ Agr / 2018 A.Y 2015-16	S.R.S. Villas Luxury Hotel Pvt. Ltd., Infront of Akashwani Campus, Mela Road, Satyadev Nagar, Gandhi Road, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	AATCS7872G BPLS15575A
55-65	528-538/ Agr / 2018 A.Y 2013-14 to 2015-16	M/s Durga Associates, H-30, Govindpuri, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	AADFD 6314 P BPLD02323G
66-76	539-549/ Agr / 2018 A.Y 2013-14 to 2015-16	M/s Sh. Ram Sharma Stone Crusher, A-1, New Vivekanand Colony, University Road, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	ABKFS 7938 Q BPLS09447E
77-79	551-553/ Agr / 2018 A.Y 2013-14	M/s Govind Construction Co., 337, Jiwaji Nagar, Gwalior	ITO (TDS), City Center, Gwalior	AAGFG6788B BPLG03702G
80-89	554-563/ Agr / 2018 A.Y 2013-14 to 2015-16	M/s Jai Bajrang Wali Construction, MIG-25 Darpan Colony, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	AAFFJ6368M BPLJ01703C
90-99	564-573/ Agr / 2018 A.Y 2013-14 to 2015-16	M/s Achal Associates, 28-Arjun Nagar, Near Balwant Nagar, Gandhi Road, Thatipur, Gwalior	ITO (TDS), City Center, Gwalior	AAPFA 9433 N BPLA04660F
100-106	574-580/ Agr / 2018 A.Y 2014-15 to 2015-16	M/s Jagannath Construction Co., C – 34, Bhagat Singh Nagar, Bhind Road, Gwalior	ITO (TDS), City Center, Gwalior	AHGPP8688L BPLG05722G

107-114	581-588/ Agr / 2018 A.Y 2014-15 to 2015-16	Girraj Singh Parmar, Panchvati Colony, A.B. Road, Bahodapur, Gwalior	ITO (TDS), City Center, Gwalior	AHGPP8688L BPLG05725G

Appellant by	Shri Deependra Mohan, CA in ITA No. 414-415 /Agr/ 2018 Shri K.C. Agarwal, Advocate in ITA No.474-475/Agr/2018 Shri Satish Chobey in another appeals
Respondent by	Shri Waseem Arshad, Sr. DR

Date of Hearing	10.07.2018
Date of Pronouncement	11.07.2018

ORDER

PER BENCH:

This bunch of appeals is directed against the orders of the ld. CIT(A), Agra, upholding levy of fee u/s 234E of the Income Tax Act, 1961(hereinafter, for short, 'the Act').

2. Since a common issue is involved in all these appeals, they are being disposed of by this consolidated order, for the sake of convenience.

3. Briefly, the facts are that late fees have been levied by the AO u/s 234E of the Act. The ld. CIT(A) has confirmed the same, relying on the decision in the case of 'Rajesh Kaurani vs. Union of India', 83 Taxmann.com 137(Guj).

4. Thus, the issue involved in all these appeals is as to whether late filing fee u/s 234E of the Act has rightly been charged in the intimation issued u/s 200A/206CB of the Act while processing the TDS returns/statements, the enabling clause (c) having been inserted in Section 200A w.e.f. 01.06.2015. Earlier, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statements filed for a period up to 31.03.2015, no late fee could be levied in the intimation issued u/s 200A of the Act.

5. On similar facts, we have decided this issue in the case of 'Sudershan Goyal vs. DCIT (TDS)', in ITA No. 442/Agra/2017, vide order dated 09.04.2018. The relevant part of the said order is reproduced as follows:

> *"3. Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOI', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in 'Rajesh Kaurani' (supra) holds the field.*

4. We do not find the view taken by the ld. CIT(A) to be correct in law. As against 'Rajesh Kaurani' (supra), 'Shri FatehrajSinghvi and Others vs.UOI', 73 Taxmann.com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing 'Rajesh Kaurani' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.

5. In 'Shri Fatehraj Singhvi and Others' (supra) it has been held, inter alia, as follows:

> *"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."*

> *6. In view of the above, respectfully following 'Shri Fatehraj Singhvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."*

6. In the above view, respectfully following 'Shri FatehrajSinghvi and Ors' (Supra), and our own findings in the case of 'Sudershan Goyal' (Supra), we accept the grievance of the assessees as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under section 234E of the Act is cancelled.

7. In the result, all the appeals are allowed.

(Order pronounced in the open court on 11.07.2018)

Sd/-	**Sd/-**
(Dr.Mitha Lal Meena)	**(A.D. Jain)**
Accountant Member	**Judicial Member**

Dated 11/07/2018
Aks/-DOC

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

		Date	
1.	Draft dictated (DNS)	10.07.2018	PS
2.	Draft placed before author	11.07.2018	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		