

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

**श्री एन के चौधरी, न्यायिक सदस्य एवं श्री डि.एस.लेखा सदस्य के समक्ष
BEFORE SHRI N.K.CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.578/Viz/2019 to 582/Viz/2019
(निर्धारण वर्ष/Assessment Year:2014-15 & 2015-16)**

Commandant, 6th BN APSP
Camp, Mangalagiri
Guntur
[PAN : AAAGC1899L]

Income Tax Officer (TDS)
Guntur

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

निर्धारिती की ओर से / Assessee by
राजस्व की ओर से / Revenue by

:
:

Shri G.V.N. Hari, Advocate.
Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

:

29/04/2021

घोषणा की तारीख/Date of Pronouncement

:

31/05/2021

आदेश /ORDER

Per D.S.Sunder Singh, Accountant Member :

These appeals are filed by the assessee against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-2, Guntur dated 10.06.2019.

2. The issue involved in these appeals is related to the levy of late filing fee u/s 234E of the Income Tax Act, (in short 'Act'). Assistant

Commissioner of Income Tax, TDS, CPC, Gaziabad(AO) has raised demand u/s 200A of the Act for each quarter as under :

Quarter No.	Fee u/s 234E Rs.
Q1	4970
Q2	1890
Q3	300
Q4	
2013-14	187600
2014-15	114000

The assessment years involved in these appeals are 2014-15 & 2015-16. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) viewed that the provisions of section 200A(1)(c) are clarificatory in nature and hence, effective retrospectively and accordingly, held that late fee u/s 234E is chargeable even prior to 01.06.2015. Thus, the Ld.CIT(A) confirmed the order of the AO following the decision of Hon'ble Gujarat High Court in the case of Rajesh Kourani (83 taxmann.com 137). Therefore, the assessee has filed appeals before this Tribunal.

3. During the appeal hearing, the Ld.AR submitted that unless it is expressly provided or demonstrated, any provisions of the statute is to be read as having prospective effect, but not retrospective effect. The Ld.AR relied on the decision of Hon'ble Karnataka High Court and argued that no

computation of fee for the demand or intimation u/s 234E could be made for TDS deducted for the respective assessment year prior to 01.06.2015. The Ld.AR further submitted that when there are divergent decisions of Hon'ble High Courts, the decision most favourable to the assessee has to be adopted as held by Hon'ble Supreme Court in the case of CIT Vs Vegetable Products Ltd. (88 ITR 192) and hence requested to allow the appeals of the assessee.

4. Per contra, the Ld.DR relied on the orders of the lower authorities.

5 We have heard both the parties and perused the material placed on record. Hon'ble Gujarat High Court in the case of Rajesh Kourani (supra) decided the issue in favour of the revenue holding that amendment to clause 1 of section 200A would be clarificatory amendment, and therefore the revenue is competent to collect the fee. Whereas, the Hon'ble Karnataka High Court in the case of Sree Ayyappa Educational Charitable Trust Vs. DCIT [2018] 301 CTR 150 (Kar.)] and Fatheraj Singhvi & Ors. held that unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect, and accordingly decided the issue in favour of the assessee and there is no decision on this issue by the Hon'ble Jurisdictional High Court.

Therefore, in the absence of the judgement of Hon'ble jurisdictional High Court , we are of the view that the decision, most favourable to the assessee required to be adopted as held by the Hon'ble Apex Court in the case of M/s Vegetable Products Ltd. (supra)

Hon'ble Karnataka High Court in the case of Fateraj Singvi & Ors.

[2016] 73 taxmann.com 262 held as under :

"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.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be

having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.

Respectfully following the view taken by the Hon'ble Karnataka High Court, we hold that the late fee levied is unsustainable, accordingly we set aside the orders of the lower authorities and delete the late fee levied by the AO.

6 In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 31st May, 2021.

Sd/- (एन के चौधरी) (N.K.CHOUDHRY)	sd/- (डि.एस.सुन्दरसिंह) (D.S.SUNDER SINGH)
न्यायिक सदस्य/ JUDICIAL MEMBER	लेखा सदस्य/ACCOUNTANT MEMBER
Dated : 31 .05.2021	
L.Rama, SPS	

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

1. निर्धारिती/ The Assessee- Commandant, 6th BN APSP, Camp, Mangalagiri
Guntur
2. राजस्व/The Revenue – Income Tax Officer (TDS), Guntur
3. The Commissioner of Income Tax (TDS), Vijayawada
4. The Commissioner of Income Tax (Appeals)-2, Guntur
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam