

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH, "A", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &  
SHRI R.L NEGI, JUDICIAL MEMBER**

**आयकरअपीलसं./ITA No. 1072/CHD/2018**

निर्धारणवर्ष / Assessment Year : 2015-16

M/s H.P. Agro Industries Corporation Ltd., Plot NO. 8, Pesticide Unit, Parwanoo (H.P)	बनाम	The Asstt. CIT, Centralized Processing Cell-TDS, Bangluru
स्थायीलेखासं./PAN NO: PTLH11428E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

**Hearing through video Conferencing**

निर्धारितीकीओरसे/Assessee by : Shri Manoj Kumar, Advocate

राजस्वकीओरसे/ Revenue by : Smt. Meenakshi Vohra, Addl. CIT(DR)

सुनवाईकीतारीख/Date of Hearing : 15.04.2021

उद्घोषणाकीतारीख/Date of Pronouncement : 05.07.2021

**आदेश/Order**

**Per R.L. Negi, Judicial Member:**

The assessee has filed the present appeal against the order dated 15.06.2018 passed by Commissioner of Income Tax (Appeals), Shimla [for short 'the CIT(A)'] for the assessment year 2015-16, whereby the Ld. CIT(A) has allowed the appeal filed by the assessee against the assessment order passed u/s 234E of the Income Tax Act, 1961 [for short 'the Act'].

2. Brief facts of the case are that the appellant/assessee a public sector undertaking of the govt. of Himachal Pradesh, filed its TDS return for the 1<sup>st</sup> quarter for the financial year 2014-15 on 25.08.2015,

which was due on 15.07.2014. However, the assessee paid the TDS amount in full along with interest thereon. The Assistant Commissioner Centralized Processing Cell, TDS passed order dated 04.09.2015 inter alia imposing late fee of Rs. 50,000/- for late filing of TDS return. The assessee challenged the said order before the Ld. CIT(A) inter alia on the grounds that the order u/s 234E is bad in law; that since the TDS was deposited along with interest no loss was caused to the department; and that the assessee being a public sector undertaking of the govt. had no intention for late filing of TDS return. However, the Ld. CIT(A) rejecting the contention of the assessee upheld the action of the Assistant Commissioner and dismissed the appeal filed by the assessee. Against the said findings of the Ld. CIT(A) the assessee is in appeal before this Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT(A) on the following grounds: -

1. *That authorities below ought to have considered that due date for filing TDS return was 15.07.2014 for the period between 01.04.2014 to 30.06.2014 and amendment of section 200A(1) (c ) of Income Tax Act come into force on 01.06.2015. Therefore law applicable prior to should have applied while deciding case of appellant alternatively.*
2. *That the authorities below erred in not considering the Judgment passed by Hon'ble IT.AT. Amritsar Bench in the case of Sibia Health Care Pvt. Ltd vs. Dy. Commissioner of Income Tax (TDS), wherein it was held that late fee should not have been imposed. The appellant is also relying on Judgment and order passed by Hon'ble ITAT, Mumbai in ITA no.*

*1999/mum of 2017, titled as "board of control for Cricket board in India Vs.ACIT-TDS-2 Mumbai".*

3. *The authorities below ought to have considered that the delay in filing of TDS statement was due to inadvertent bona fide mistake, occurred due to frequent changing of officers who was managing the accounts of appellant.*
4. *The above grounds are independent and without prejudice to one another. The appellants seek leave to add or withdraw any of the aforesaid grounds as and when considered necessary.*
5. *The above grounds are independent and without prejudice to one another. The appellants seek leave to add or withdraw any of the aforesaid grounds as and when considered necessary.*

4. At the outset, the Ld. counsel for the appellant/assessee submitted before us that in the present case the due date for filing TDS return was 15.07.2014 for the period 01.04.2014 to 30.06.2014. The amendment of section 200(1)(c) of the Act came into force on 01.06.2015. Therefore, the Ld. CIT(A) ought to have set aside the order passed by the Assistant Commissioner by applying the law existing before the amendment. The Ld. Counsel further pointed out that the issue involved in this case is covered in favour of the assessee by the decision of the Amritsar Bench of the Tribunal in the case of *Sibia Health Care Pvt. Ltd. vs. Dy. Commissioner of Income Tax(TDS) ITA No 90/Asr/2014 Ay.2013-14*, decision of the Mumbai Bench of the Tribunal in the case of *Board of Control for Cricket in India vs. ACIT (TDS)-2, ITA No. 1999/Mum/2017*, decision of the Delhi Bench of the Tribunal in the case of *Ashok Kumar Ludhiana vs. ACIT, CPC-TDS Ghaziabad*, decisions of the Pune Bench of the

Tribunal in the case of *Gangamai College and others vs. ACIT, ITA No.1167/Pun/2018 dated 06.11.2018* and *Ganjan Construction Nashik vs. DCIT CPC (TDS)*. The Ld. Counsel further submitted that since the findings of the Ld. CIT(A) are contrary to the decisions of the Tribunal referred above, the same is liable to be set aside.

5. On the other hand, the Ld. Departmental Representative (DR), supporting the order passed by the Ld. CIT(A) submitted that since the findings of the Ld. CIT(A) are in accordance with the provisions of law, there is no infirmity in the said order, therefore no action is required in this case.

6. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the appellant/assessee and the cases relied upon by the authorities below. The legal issue raised by the appellant/assessee is the Ld. CIT(A) has wrongly confirmed the order passed by the Assistant Commissioner by retrospectively applying the amended provisions of section 200A of the Act, which became applicable w.e.f. 01.06.2015. As pointed out by the Ld. counsel, the Pune, Mumbai and Delhi Benches of the tribunal have dealt with the identical issue and held that the concerned authorities have wrongly applied the amended provisions of section 200A retrospectively. In the case of *Gangamai College vs. ACIT*, (supra) the Pune Bench of the Tribunal has held that the AO

had no jurisdiction to issue notices under section 200A of the Act for computing and charging late filing fees u/s 234E of the Act for the period of tax deducted prior to first day of June, 2015, by following the judgment of the Hon'ble High Court in the case of *Fatheraj Singhvi vs. Union of India*, wherein it has been held that even in the cases of belated returns where it is clearly related to the period prior to 01.06.2015, the AO has no power to issue notice u/s 200A of the Act. The operative part of the order of the Pune Bench reads as under: -

*9. We find that the issue raised in the present bunch of appeals is similar to issue before Tribunal of levy of late filing fees under section 234E of the Act for the period prior to 01.06.2015 and it also addressed the delay in filing the appeals as alleged by CIT(A) while counting the period of filing appeals from the date of issue of intimation under section 200A of the Act and not from the date of issue of order under section 154 of the Act, in bunch of appeals in the case of Medical Superintendent Rural Hospital in ITA NOS.651/PUN/2018 to ITA Nos.1167 to 1171/PUN/2018 Gangamai College of Engineering 661/PUN/2018 and Junagade Healthcare Pvt. Ltd. in ITA NOS.1018/PUN/2018 to 1028/PUN/2018, order dated 25.10.2018. The relevant findings of Tribunal are as under: -*

*"11. We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees*

*charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in ITA Nos.560/PN/2016 & 561/PN/2016,1018/PN/2016 to 1023/PN/2016 in Maharashtra Cricket Association Vs. DCIT (CPC)-TDS, Ghaziabad, relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under: -*

*"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."*

*12. The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education and Research Foundation in ITA Nos.1887 to 1893/PUN/2016 and others relating to assessment years 2013-14 and 2014-15 vide order dated 13.01.2017 and also in Swami Vivekanand Vidyalaya Vs. DCIT(CPC)-TDS (supra) and Medical Superintendent Rural*

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*Hospital Vs. ACIT (CPC)-TDS in ITA Nos.2072 & 2073/PUN/2017, order dated 21.12.2017, which has been relied upon by the learned Authorized Representative for the assessee.*

*13. The Hon'ble High Court of Karnataka in the case of Fateheraj Singhvi Vs Union of India (supra) had also laid down similar proposition that the Imendment 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 ITA Nos.1167 to 1171/PUN/2018 Gangamai College of Engineering 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 an 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(i) 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 ITA Nos.1167 to 1171/PUN/2018 Gangamai College of Engineering 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 1st 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.”*

7. As pointed out by the Ld. counsel, the Ld. counsel for the appellant/assessee the legal ground raised by the appellant is covered in favour of the assessee by the order of the Pune Bench of the Tribunal in the case discussed above. The said decision is based on the ratio laid down by the Hon'ble High Court of Karnataka in the case of *Fatheraj Singhvi vs. Union of India* discussed above. We further notice that the Pune Bench of the Tribunal has decided the issue in question in the said case following the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs. Vegetable Product Ltd.*, wherein the Hon'ble Court has held that in case of difference of opinion on an issue, the opinion which is in favour of assessee needs to be followed. Since, the issue involved in the present case is identical to the issue involved in the case of *Gangamai College vs. ACIT* (supra) and the Tribunal has decided the same in favour of the appellant/ assessee, we find merit in the contention of the Ld. counsel that the impugned order is contrary to decision of the Pune Bench of the Tribunal discussed above. Hence, respectfully following the decision of the Pune Bench of the Tribunal discussed above, we allow the appeal of the assessee and set aside impugned order

passed by the Ld. CIT(A). Accordingly, we direct the AO to delete late fee imposed in this case.

In the result, the appeal of the assessee is allowed.

Order pronounced on 5<sup>th</sup> July, 2021.

Sd/-

( N.K. SAINI)

उपाध्यक्ष /Vice President

Sd/-

(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

**Dated : 05.07. 2021**

“आर.के.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,  
सहायकपंजीकार/ Assistant Registrar