

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE
(THROUGH VIRTUAL COURT)**

**BEFORE SHRI INTURI RAMA RAO, AM
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

आयकर अपील सं. / ITA Nos.392 to 394/PUN/2018

निर्धारण वर्ष / Assessment Year : 2013-14

Jeevanrekha Critical Care
and General Hospital,
Behind Ved Mandir, Tidke Colony,
Trimbak Road,
Nashik – 422001

PAN: AAGFJ1217L

.....अपीलार्थी / Appellant

बनाम / V/s.

The DCIT, CPC(TDS),
Ghaziabad, U.P.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 14-07-2021

घोषणा की तारीख / Date of Pronouncement : 14-07-2021

आदेश / ORDER

PER BENCH :

All these three appeals preferred by the assessee emanates from the respective orders of the Ld. CIT(A)-3, Nashik, dated 01.09.2015 and 03.09.2015 as per the grounds of appeal on record.

2. Brief facts of the case are that the assessee is a Firm and it had filed its TDS quarterly statements of 26Q for Quarter-2 for F.Y. 2012-13 on

14.05.2013 which was due on 15.10.2012, for Quarter-3 on 14.05.2013 which was due on 15.01.2013 and for Quarter-4 on 03.08.2013 which was due on 15.05.2013.

3. In these set of appeals, the intimation had been issued by the Assessing Officer u/s 200A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') wherein, the late filing fees payable u/s 234E of the Act was charged by the Assessing Officer.

4. None appeared on behalf of the assessee. However, since the issue involved in these appeals is covered, we are disposing of these appeals after hearing the ld. DR on this issue of unavailability of enabling the provisions to the Assessing Officer for levy of late filing fees on the assessee in respect of defaults of non-filing of TDS statement for the period prior to 01.06.2015. This issue is squarely covered by the decision of Nagpur Bench of Tribunal in group cases i.e. M/s. Rajyas Software Pvt. Ltd. vs. ACIT in ITA No.208/NAG/2019 & ors. order dated 31.01.2020. The Tribunal after considering elaborately, held as under:

"6. We have heard both the sides on this issue of unavailability of enabling the provisions to the Assessing Officer for levy of late filing fees on the assessee in respect of defaults of non-filing of TDS statement for the period prior to 01.06.2015. It is undisputed fact that the provisions of section 234E of the Act was originally brought into Statute w.e.f. 01.7.2012 by the Finance Act, 2012. However, the un-amended provisions of section 200A of the Act were not to provide the powers to the officers to charge the late filing fees. In principle, the provisions of section 234E of the Act enables the officers for the procedure to levy late filing fees when the assessee failed to file the TDS statements under sub-section (3) of section 200 of the Act. There is no dispute about the fact on availability of enabling the provisions w.e.f. 01.06.2015 only. The Finance Act, 2015 provides for the amendment to section 200A of the Act enabling the Assessing Officers to levy late filing fee for default of late filing of TDS statements. There are huge amount of litigation on the issue i.e. if the Assessing Officer has power to levy the late filing fees when the assessee files the TDS statement for the quarters filing upto 01.06.2015. However, there is no dispute about the non-availability of such powers for the quarter related to the period later to 01.06.2015.

7. During the time of argument before us, on the issue of notice u/s 234E of the Act, which is different from the levy of fee at the time of processing of TDS statements, Mr. Atal, ld. Counsel, mentioned that the officers of the Department have started issuing notices independently under the provisions of section 234E of the Act and, for that, the Department relies on the decision of Chennai Bench of the Tribunal in the case of Smt. G. Indhirani vs. DCIT vide ITA Nos.1019 to 1021/Mds/2015 and others dated 10.07.2015. Referring to the contents of para 8 to 11 of the said decision in the case of Smt. G. Indhirani (supra) where the Tribunal obliquely referred to the availability of powers independently for collecting the said late filing fees in case of belated TDS statements, ld. Counsel mentioned that the said decision of the Tribunal (supra) was pronounced prior to the Hon'ble Karnataka High Court's judgement in the case of Fatheraj Singhvi (supra) and after the judgement of the Hon'ble High Court, the decision of the Tribunal in the case of Smt. G. Indhirani (supra) is not a good law. It is the decision of the Hon'ble Karnataka High Court's judgment (supra) that the provisions of the amendment to section 200A r.w.s. 234E are prospective.

8. Further, ld. Counsel submitted that in the instance case, the late filing fees was levied u/s 234E of the Act at the time of **processing** of the TDS statements. The Assessing Officer never issued independent **notices u/s 234E** of the Act.

9. Ld. AR submitted that, at the time of processing of TDS statements, Assessing Officer is prevented from levy of fee for the default of late furnishing of TDS statement. He relied on various decisions in his support. Coming to the legal precedent on this issue. Relying on the decisions of Pune Bench of the Tribunal in the case Medical Superintendent Rural Hospital vs. DCIT vide ITA No.651/PUN/2018 and others dated 25.10.2018, in the case of C & M Farming Ltd. vs. ACIT vide ITA Nos.2008 to 2017/PUN/2017 dated 06.11.2019, ld. AR submitted that the Assessing Officer suffers from lack of jurisdictional power in respect of charging of late filing fee for the assessee's defaults for the period upto 01.06.2015, the date of amendment (supra). We have also held that the TDS statements furnished for the said period subsequent to 01.06.2015, the Assessing Officer compute late filing fee on the said belated TDS statements. This is a law so far as specific issue is concerned as on date. The relevant extract from the said judgements and other decisions are as follows.

A. C & M Farming Ltd. (supra) :

"7. The contention of Shri Kishore Phadke, the Ld.A.R. is that AO has no jurisdiction to charge late fee u/s 234E of the Act for the reason that there was no enabling procedure for computation of late fee u/s 200A of the Act concerning the year under consideration. Further, he submitted that the computation of late fee was inserted in the Finance Act w.e.f. 01.06.2015 and since the amendment is prospective in nature, the late fee imposed u/s 234E r.w. 200A of the Act is not maintainable in the present case. The Ld.A.R. placed reliance on the decision of the Tribunal in the case of Medical Superintendent Rural Hospital, DOBI BK Vs. DCIT, CPC(TDS) reported in (2018) 100 taxmann.com 78 (Pune - Trib) and referred to Para Nos.15 & 16 and submitted that the demand of late fee is not maintainable even if the returns of the TDS were filed after 01.06.2015, the order charging late filing fee was passed after 01.06.2015. He argued that the factual circumstances are similar to the present case, the

assessee filed TDS statements belatedly after 01.06.2015 and the ACIT, (CPS-TDS) charged late fee u/s 234E of the Act after 01.06.2015. The Ld. D.R. did not controvert the same.

8. Heard both sides and perused the material available on record. We find the issue raised in the present appeal is similar to the issue raised by the Co-ordinate Bench of the Tribunal in the case of Medical Superintendent Rural Hospital, DOBI BK(supra), wherein the co-ordinate Bench of the Tribunal held **that charging of late fee u/s 234E of the Act is not maintainable even if the assessee files TDS returns belatedly and the Assessing Officer issues intimation u/s 200A of the Act after 01.06.2015 charging late filing fee u/s 234E of the Act.** Therefore, we find force in the arguments of Shri Kishore Phadke, Ld.A.R. and the imposition of late fee u/s 200A r.w 234E of the Act confirmed by Ld.CIT(A) is set aside. Thus, additional ground raised by the assessee is allowed.”

B. Medical Superintendent Rural Hospital (supra) :

“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.”

C. Fatheraj Singhvi vs. Union of India, 73 taxmann.com 252 (Karnataka-HC) dated 26.08.2016 :

“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.”

D. Alpha Electronics Pvt. Ltd. vs. ACIT vide ITA No.1450/PUN/2019 and others dated 13.12.2019

“7. We have perused the case records and heard the rival contentions. We have also given considerable thought to the facts and circumstances involved in all these cases. It is observed on perusal of Section 200 sub section (3) r.w.s. 206C sub-section (3) proviso that when the assessee has deducted TDS, he has to deposit the amount in the Government account and after doing that he has to furnish the TDS statement before the Income Tax Authorities within the prescribed time limit. If there is late filing of those TDS statements then the Revenue Authorities may charge late filing fees u/s.234E of the Act. That however, this power the Legislature was provided to the Authorities by inserting Clause (c) to Section 200A(1) of the Act w.e.f. 01.06.2015. There are plethora of cases which decided this issue that if TDS statements were filed prior to 01.06.2015 then there cannot be any levy of late fees u/s.234E of the Act. That however, TDS statements filed after 01.06.2015 would attract the late filing fees as per Section 234E of the Act. We further observe that in these instant cases before us, in some of the cases, TDS statements were filed prior to

01.06.2015 while in some other cases, they were filed after 01.06.2015. This is the position on merits. That however, the Ld. CIT(Appeal)" s in their respective orders has not dealt with the merits of these cases and has dismissed the appeals of the assessee on the ground that there is substantial delay in filing of these appeals and also for the reason that the reasonableness attributed to that delay could not be established by the assessees therein.

8. We find that the Hon" ble Apex Court in the case of *Anil Kumar Nehru Vs. ACIT (2018) 103 CCH 0231 ISCC* has held that even if there is substantial delay in filing of appeals it can be condoned on the ground that it involves a question of law which goes into the root of the matter. In these set of appeals before us, **it pertains to a legal question whether late fees would be leviable on the assessee or not depending upon the merits involved in each case."**

10. From the above extracts of the judgment of the Hon'ble High Court as well as the Tribunal's order, where, we the undersigned are the party to a decision, we are of the opinion that it is settled issue that amendment brought in by the Finance Act, 2015 w.e.f. 01.06.2015 to section 200A r.w.s. 234E of the Act is prospective and consequently, for all the defaults committed by the assessee for the quarters prior to 01.06.2015, in respect of the TDS statements are filed belatedly either before 01.06.2015 or 01.06.2015, the Assessing Officer has no jurisdiction to charge late filing fee at the time of processing of the TDS statements.

11. We have also noticed that Mr. Atal, Id. Counsel, common to all the 111 appeals, filed the statement giving specific details of quarters involved, due dates for the quarters and actual date of furnishing of statements. On perusal of the said statements, the date of quarters involved and the actual date of filing of the statements, we find that the financial years involved are F.Y. 2012-13, 2013-14 and 2014-15. Further, we also noticed that the actual date of filing of TDS statements belatedly predominantly happened before 01.06.2015 only. However, we find in some cases i.e. (i) Vishwas Power Engineering Services Pvt. Ltd.; (ii) Audarya Construction Pvt. Ltd.; (iii) Nagar Parishad Pauni; (iv) Uttam Singh Rauthan; (v) Champak Mines and Minerals; and, (vi) Maharashtra Panchayat Samiti Bhandara, the TDS statements were furnished belatedly i.e. after 01.06.2015. In any case, the defaults in all these quarters of 111 cases by the assessees occurred in the period before 01.06.2015. Therefore, in view of the precedents, the late filing fees charged by the Assessing Officer is unsustainable in law for want of jurisdiction.

12. Before parting the order, we direct the Assessing Officer to examine closely the facts, dates of defaults, claims of the assessee etc once again and ensure that the above law is correctly applied to the facts of the present set of 111 cases. In case, the default pertains to the period later to 01.06.2015, the provisions for late filing fees u/s 234E r.w.s. 200A of the Act attract. With these directions, all these 111 appeals are allowed protanto."

5. In the facts of present case, the assessee has filed TDS quarterly statements of 26Q for Quarter-2 for F.Y. 2012-13 on 14.05.2013, for

Quarter-3 on 14.05.2013 and for Quarter-4 on 03.08.2013. Since all the statements pertain to the period before 01.06.2015, there will be no question of levying late fee charges in the case of assessee. Respectfully following the decision of Nagpur Bench of Tribunal (supra), we hold that the late filing fees charged by the Assessing Officer is unsustainable in law for want of jurisdiction. Accordingly, the grounds raised by assessee are allowed.

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

Order pronounced in the open court on 14th July, 2021.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th July, 2021
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent
3. The CIT (Appeals)-3, Nashik.
4. The CIT(TDS), Pune.
5. DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy// आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune