IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA No.3712/Mum/2019 (Assessment Year 2013-14)

ITA No.3713/Mum/2019 (Assessment Year 2014-15)

ITA No.3714/Mum/2019 (Assessment Year 2015-16)

Tamil Nadu Handloom Weavers Co-operative Society Ltd., 204, Udyog Mandir No.2, 7-C, Pitamber Lane, Mahim (W), Mumbai-400016 **PAN: AAAAH2788P**	Vs.	ITO (TDS)-2(3)(2), Mumbai.
Appellant		Respondent

Appellant by : None

Revenue by : Shri Amit Pratap Singh (DR)

Date of Hearing : 01.10.2020

Date of Pronouncement : 22.10.2020

ORDER UNDER SECTION 254(1)OF INCOME TAX ACT

PER SAKTIJIT DEY, JUDICIAL MEMBER;

1. The aforesaid appeals arise out of a common order dated 04.06.2018 of ld. Commissioner of Income-Tax (Appeals) – 60, Mumbai [For short ld. CIT(A)].

2. All these appeals have been filed belatedly with a delay of 255 days. The assessee has filed an application seeking condonation of delay supported by affidavit. On perusing such application and affidavit, we are of the view that

the delay in filing the appeals was due to reasonable cause. Hence, condonation the delay, we admit the appeals for adjudication on merits.

3. Though, the assessee has raised several lengthy and argumentative grounds in the appeals, however, only common issue arising in all the appeals is with regard to fee levied under section 234E of the Act while processing the statements of tax deducted at source under section 200A of the Act for various quarters relating to Financial Year 2012-13, 2013-14 & 2014-15.

4. When the appeals were called for hearing, no one was present on behalf of assessee to represent the case. However, considering the nature of dispute, we proceed to dispose of the appeal ex-parte qua the assessee after hearing the ld. Departmental Representative.

5. We have heard the ld. Departmental Representative and perused the material available on record. Briefly the facts are, the assessee is stated to be a Government of Tamil Nadu undertaking dealing/selling handloom products of Tamil Nadu. It has various branches in India and one amongst them being in Mumbai. For different quarters of Financial Year 2012-13 to 2014-15, the assessee filed its TDS statements as provided under section 200(3) of the Act. However, such TDS statements were filed beyond the prescribed time limit. While processing the TDS statements under section 200A of the Act, the Assessing Officer as per Clause-(1)(c) of section 200A charged fees under

section 234E of the Act for the delay in filing the TDS statements. Challenging the levy of fee under section section 234E of the Act, the assessee filed appeals before ld. CIT(A). Though, in course of hearing before the First Appellate Authority the assessee made various submissions and also cited number of judicial precedents in support of its claim that fee under section 234E of the Act cannot be charged while processing the TDS statements under section 200A for any period prior to 01.06.2015, however, ld. CIT(A) did not find merit in such submissions. Relying upon some judicial precedents ld. CIT(A) upheld the levy of fee under section 234E of the Act. The reasoning on the basis of which ld. CIT(A) came to such conclusion is, since section 234E of the Act was in the statute much earlier, the amendment made to section 200A by inserting Clause-(1)(c) is only clarificatory in nature.

6. Having considered the submissions of ld. Departmental Representative, we find that section 234E of the Act contemplating levy of fee for late filing of TDS statement was introduced to the statute w.e.f 10.07.2012. However, no such corresponding amendment was made to section 200A of the Act empowering the authority concerned to levy fee under section 234E of the Act, while processing the TDS statement. By Finance Act 2015 Clause-(c) to section 200A(1) was introduced w.e.f. 01.06.2015 empowering the authority

concerned to levy fee under section 234E of the Act while processing the TDS statement under section 200A of the Act. Therefore, prior to 01.06.2015 there was no specific provision under section 200A of the Act for levy of late filing fee under section 234E of the Act. Thus, taking note of the aforesaid factual position, different benches of the Tribunal consistently held that prior to 01.06.2015 provisions of section 200A of the Act did not contemplate levy of fee under section 234E of the Act. Therefore, it was held, even-though section 234E of the Act was in the statute prior to 01.06.2015, however, in absence of any enabling provision, no fee under section 234E of the Act can be levied for late filing of TDS statement for any period prior to 01.06.2015. The same view was expressed by the Hon'ble Karnataka High Court in case of Fatheraj Sanghvi & Ors vs. Union of India & Ors [2016] 289 CTR 602 (Kar.). In fact, in case of **Emsons Exim Pvt. Ltd. v/s ITO, ITA No.4406/Mum./2017 & Ors.** dated 28th August 2019, by majority view it was held that levy of fee under section 234E of the Act cannot be made in respect of a period prior to 01.06.2015 while processing the TDS statement under section 200A of the Act. Admittedly, no decision of the Hon'ble Jurisdictional High Court on the disputed issue is available as on date. Though, ld. CIT(A) is correct in observing that there are contrary decisions from other High Courts, however, following the well-settled legal principle that in case of contrary views being expressed by different courts on a particular issue, the view favourable to the assessee has to be taken, we are more inclined to follow the view expressed by Hon'ble Karnataka High Court in case of Fatheraj Sanghvi & Ors vs. Union of India & Ors (supra) as well as by the Tribunal in case of **Emsons Exim Pvt. Ltd. (supra).** Therefore, we direct the Assessing Officer to verify the relevant facts and not to charge any fee under section 234E of the Act for any period which is prior to 01.06.2015.

7. In the result, all the appeals of the assessee are allowed as indicated above.

Order pronounced in open court on 22nd October 2020.

Sd/-	**Sd/-**
N.K. PRADHAN	**SAKTIJIT DEY**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Date: 22.10.2020
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<u>Copy of the Order forwarded to</u> :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "E" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai