

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI SHAMIM YAHYA (ACCOUNTANT MEMBER) AND
SHRI KULDIP SINGH (JUDICIAL MEMBER)**

**ITA Nos. 789, 790, 791, 792, 793 & 794/MUM/2021
[Assessment Years: 2014-15 (Quarter 2) 2014-15 (Quarter 3) 2014-15 (Quarter 4)
AND 2015-16 (Quarter 1) 2015-16 (Quarter 2) 2015-16(Quarter 3)]**

Lekhraj Corp. Private Limited
Galaf, Sidhwa House, Old BMP
Bldg, N.A. Sawant Road, Colaba,
Mumbai – 400 005

Asstt. Commissioner of Income
Vs. Tax, Central Processing Cell-
TDS, TDS CPC Aayakar
Bhawan, Sector-3, Vaishali,
Ghaziabad, U.P. 201010

PAN No. AACCL3194P

(Assessee)

(Revenue)

Assessee by : Shri M.B. Advani, A.R
Revenue by : Shri Mehul Jain, D.R

Date of Hearing : 3&9/12/2021
Date of pronouncement : 31/12/2021

ORDER

PER KULDIP SINGH, J.M:

All the aforesaid appeals bearing common question of law and facts are being disposed off by way of composite order in order to avoid repetition on discussion.

2. Briefly stated, facts necessary for adjudication of the controversy at hand are: the assessee by filing aforesaid appeals challenged the impugned order confirming the charging of late filing fees levied by the A.O u/s 234E of the Income Tax Act 1961, (for short 'the Act'), by passing order u/s 200A of the Act. Impugned late fee has been charged by the A.O u/s 234E of the Act.

3. Assessee carried the matter before the Id. CIT(A) by way of filing appeals who has upheld levy of charging of late filing fees by the A.O u/s 234E of the Act by dismissing the appeals.

4. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

5. Challenging the impugned order passed by CIT(A) Id. A.R for the assessee contended that the late fee levied by A.O and confirmed by Id. CIT(A) is not leviable on the ground that the amendment inserted u/s 200A of the Ac is to be effective from 01.06.2015, which is not applicable to the facts and circumstances of the case. To support his contentions Id. A.R for the assessee relied upon the order passed by coordinate benches of Tribunal in M/s Samikaran Learning Pvt. Ltd. Vs. DCIT, ITA No. 4050 to 4054/Del/2016, dated 09.11.2017, Smt. G. Indhirani Vs. DCIT, ITA Nos. 1019, 1020 7 1021/Mds/2015, dated 10.07.2015, Sibia Healthcare Pvt. Ltd. Vs. DCIT (TDS), ITA No. 90/Asr/2015, dated 09.06.2015, Dharam Deep Public School VS. DCIT, CPC-TDS, ITA No.3112 to 3116/ Del/2016, dated 05.01.2018, and Anand Hatcheries Pvt. Ltd. Vs. DCIT CPC-TDS, ITA Nos. 1337 to 1339/PN/2015, dated 23.09.2016.

6. However, on the other hand Id. D.R for the revenue contended that since Sec. 234B is charging provisions whereas u/s 200A is machinery provisions, the A.O was empowered to levy the late filing fees u/s 234E of the Act and drew our attention to the decision rendered by Hon'ble Bombay High Court in the case of Rashmikant Kundalia Vs. Union of India (W.P No. 771 of 2014) and decision rendered by Hon'ble Karnataka High Court in case of Adithya Bazor P. Solutions Vs. Union of India [W.P No. 6918 – 6938/2014 (T-IT)].

7. Before proceeding further, we would like to extract the provisions contained u/s 234E of the Act and provisions contained u/s 200A of the Act for ready perusal as under:-

234E. Fee for defaults in furnishing statements

- (1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to subsection (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.
- (2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.
- (3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.
- (4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012

200A: Processing of statements of tax deducted at source

- (1) Where a statement of tax deduction at source, or a correction statement, has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—
 - (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
 - (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
 - (c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount

paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;

(d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation: For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act;

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said subsection.

8. Section 200A was amended by way of Finance Act, 2015 as under:

In section 200A of the Income-tax Act, in sub-section (1), for clauses (c) to (e), the following clauses shall be substituted with effect from the 1st day of June, 2015, namely:—

“(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

In the backdrop of the aforesaid facts and circumstances of the case and the provisions contained u/s 234 and 200A of the Act the sole question arises for determination in this case is:

“as to whether amended provisions contained u/s 200A by virtue of Finance Act, 2015, effective from 1st June, 2015 are applicable to the cases decided prior to 1st June, 2015 ?”

9. Identical issues has already been decided by the coordinate bench of Tribunal in the cases relied upon by the Id. A.R for the assessee referred to in preceding para 5.

10. When undisputedly levy has been made by the A.O in all appeals under consideration prior to 1st June, 2015 by invoking the provisions contained u/s 234E the same is not sustainable in the eyes of law. No doubt Hon'ble High Court of Bombay in case of Rashmikant Kundalia (supra) the constitutional validity of Sec. 234E of the Act has been, upheld, the same is not applicable to the facts of the cases at hand by virtue of the amendment to Sec. 200A by way of Finance Act, 2015 effective from 1st June, 2015 because A.O had issued intimation u/s 200A of the Act prior to 01.06.2015.

11. No doubt, provisions contained u/s 234E were inserted by the Finance Act, 2012 imposing a liability upon deductor where TDS statement/returns were filed belatedly to pay fee as per the said section, Assessing Officer is to collect said fee chargeable u/s 234E of the Act for which machinery provisions have been provided u/s 200A of the Act to be effective from 01.06.2015. When undisputedly A.O has not invoked the provisions contained u/s 234E prior to 1st June, 2015 as required u/s 200A the levy is not sustainable, the said amendment being prospective in

nature and cannot be applied in processing of TDS return/statement prior to 01.06.2015. So, the contention raised by Id. D.R for the revenue by relying upon the decision rendered by Hon'ble High Court's referred to in the preceding para is not sustainable.

12. Identical issue has also been decided in favour of the assessee by the coordinate bench of the Tribunal in case of Sibia Healthcare Pvt. Ltd. By returning following findings para 8-10 as under:

8. In effect thus, post 1st June 2015, in the course of processing of a TDS statement and issuance of intimation under section 200A in respect thereof, an adjustment could also be made in respect of the "fee, if any, shall be computed in accordance with the provisions of section 234E". There is no dispute that what is impugned in appeal before us is the intimation under section 200A of the Act, as stated in so many words in the impugned intimation itself, and, as the law stood, prior to 1st June 2015, there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E. While examining the correctness of the intimation under section 200A, we have to be guided by the limited mandate of Section 200A, which, at the relevant point of time, permitted computation of amount recoverable from, or payable to, the tax deductor after making the following adjustments:

(a). after making adjustment on account of "arithmetical errors" and "incorrect claims apparent from any information in the statement"

- Section 200A(1)(a)

(b). after making adjustment for 'interest, if any, computed on the basis of sums deductible as computed in the statement".

- Section 200A(1)(b)

9. No other adjustments in the amount refundable to, or recoverable from, the tax deductor, were permissible in accordance with the law as it existed at that point of time.

10. In view of the above discussions, in our considered view, the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A. This intimation is an appealable order under section 246A(a), and, therefore, the CIT(A) ought to have examined legality of the adjustment made under this intimation in the light of the scope of the section 200A. Learned CIT(A) has not done so. He has justified the levy of fees on the basis of the provisions of Section 234E. That is not the issue here. The issue is whether such a levy

could be effected in the course of intimation under section 200A. The answer is clearly in negative. No other provision enabling a demand in respect of this levy has been pointed out to us and it is thus an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected. As intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within 31st March 2015. That time has already elapsed and the defect is thus not curable even at this stage. In view of these discussions, as also I.T.A. No.90 /Asr/2015 Assessment year 2013-14 Page 7 of 7 bearing in mind entirety of the case, the impugned levy of fees under section 234 E is unsustainable in law. We, therefore, uphold the grievance of the assessee and delete the impugned levy of fee under section 234E of the Act. The assessee gets the relief accordingly.”

13. In view of what has been discussed above and following the order passed by coordinate bench of Tribunal we are of the considered view for A.O as well as Id. CIT(A) have erred in levying /confirming the late filing fee u/s 234E of the Act by passing the order u/s 200A of the Act. Consequently, penalty levied/confirmed is ordered to be deleted.

14. Resultantly, the aforesaid appeals filed by the assessee are allowed.

Order pronounced in the open court on 31.12.2021

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER
Mumbai;
Dated: 31.12.2021
PS: Rohit

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai