

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA ACCOUNTANT MEMBER**

**ITA No. 2312 to 2322/DEL/2017
[A.Ys 13-14 & 2014-15]**

M/s AVV Enterprises Pvt Ltd
B - 30, 3rd Floor,
Chandra Gupt Complex
Subash Chowk, Laxmi Nagar
Delhi

Vs.

The Dy. C.I.T
CPC - TDS,
Ghaziabad

PAN : AAICA 2539 F

[Appellant]

[Respondent]

**Date of Hearing : 04.03.2020
Date of Pronouncement : 05.03.2020**

Assessee by : None [w/s]
Revenue by : Ms. Rakhi Vimal, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above captioned appeals by the same assessee are preferred against the levy of fee u/s 234E of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] for A.Ys 2013-14 to 2014-15.

2. None appeared on behalf of the assessee. However, the assessee chose to file written submissions.

3. The sum and substance of the contention of the assessee is that in the captioned appeals pertaining to A.Ys 2013-14 and 2014-15 an amendment has been brought in the Act w.e.f 01.06.2015 u/s 234E of the Act and before that there was no authority or competence or jurisdiction on the part of the concerned officer or department to compute and determine the fee u/s 234E of the Act.

4. Per contra, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that section 234E was already in the Act and, therefore, fee has been rightly levied by the Assessing Officer u/s 234E of the Act.

5. We have given thoughtful consideration to the orders of the authorities below. We find force in the written contentions of the ld. counsel for the assessee. The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi & Ors 289 CTR 602 had the occasion to consider similar issue and made the following observations while adjudicating the matter:

"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(l)(c), (d) and (f) have come into force only with effect from 01.06.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 01.06.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 01.06.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 01.06.2015 could not have been made."

6. Similar view was taken by the co-ordinate bench in the case of M/s Vkare Bio Sciences Pvt Ltd Vs. DCIT, CPC-TDS, Ghaziabad in which it was held as under:

"The judgement relied upon by the Ld. DR relate to the constitutional validity and vires of the provision of Sec. **234E**. Nowhere in the judgments Hon'ble courts have held that the fees u/s 200A read with section 234E shall levied prior to

01.06.2015 because prior to this date has not prescribed levy of fees u/s 200A. Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee u/s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled. Accordingly, the appeal of the assessee is allowed."

7. Moreover, if there is a divergence of opinion between different Hon'ble High Courts on an issue, the one in favour of the assessee needs to be followed as laid down by the Hon'ble Supreme Court in the case of Vegetable Products Ltd 88 ITR 192.

8. In light of the effective date of amendment i.e. 01.06.2015, and considering the decision of the Hon'ble High Court of Karnataka, we direct the Assessing Officer to delete the fee levied u/s 234E of the Act in all the above captioned appeals of the assessee.

9. In the result, all the appeals of the assessee in ITA Nos. 2312 & 2322/DEL/2017 are allowed.

The order is pronounced in the open court on 05.03.2020.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 05th March, 2020.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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