

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, COCHIN**

Before Shri George George K, Judicial Member

ITA No.168/Coch/2020 : Asst.Year 2013-2014

M/s.Travel Trails India Pvt.Ltd. V.V.Road, Pettah PO Trivandrum – 695 024. PAN : AADCT9219L.	Vs.	The Asst.Commissioner of Income-tax, TDS Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.Vinod Haridas, FCA

Respondent by : Sri.B.Sajjive, Sr.AR

Date of Hearing : 09.06.2020	Date of Pronouncement : 10.06.2020
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O R D E R

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 11.02.2020. The relevant assessment year is 2013-2014.

2. The solitary issue raised is whether the CIT(A) is justified in confirming levy u/s 234E of the I.T.Act.

3. Brief facts of the case are as follow:

Against the TDS / TCS return filed in Form 24Q For Q4 in financial year 2012-2013 on 05.07.2016, the CPC-TDS has sent an intimation u/s 200A of the I.T.Act vide order dated 08.07.2016. In the said intimation, late filing fee u/s 234E of the I.T.Act amounting to Rs.2,07,965 was levied.

4. Aggrieved by the order imposing fee u/s 234E of the I.T.Act, the assessee preferred an appeal before the first appellate authority. The CIT(A) dismissed the appeal filed by

the assessee and confirmed levy of fees u/s 234E of the I.T.Act. The relevant finding of the CIT(A) reads as follow:-

"The Appellant filed quarterly return for Q4 in form 24Q for FY 2012-13 belatedly on 05.07.2016. As per provisions of section 234E of the Act, CPC has levied the late filing fee of Rs.2,07,970. During the appeal proceedings, the appellant could not submit any evidence to prove the levy of late filing fee is wrong on facts. However, the Appellant had submitted that it had in fact filed the quarterly return on 05.07.2016 belated by 1147 days and further submitted that the delay in filing of the quarterly return was not deliberate and therefore, to be condoned. The arguments of the Appellant are considered. Under the provisions of section 234E of the Act, there is no discretion to delete the late filing fee. Hence, the argument of the appellant cannot be applied for cancelling the late filing fee in the given facts and circumstances of the case. Hence, it is held that there is no merit in the argument of the Appellant and the ground raised on the issue of levy of late filing fee of Rs.2,07,970 under section 234E of the Act is dismissed."

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal, raising the following grounds:-

"1. The Learned Commissioner of Income Tax(Appeals) erred in not following the ratio of the decision of Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs Union of India[2016]73taxmann.com 252 which laid down that amendment made Under Section 200A could be termed as conferring substantive power upon authority and was held to be having prospective effect, hence no computation of fee for demand or intimation for fee under Section 234E could have been made for TDS deducted for respective assessment years prior to 01.06.2015.

2. The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that imposition of Section 234E for the Assessment Years prior to 01.06.2015 is illegal and invalid.

3. The Learned Commissioner of Income Tax(Appeals) erred in not following the ratio laid down by Bangalore Tribunal in a case with similar factual matrix in the case of Manoj Kumar Jaiswal Vs Assistant Commissioner of Income

Tax,CPC-TDS,Ghaziabad [2019] 104 taxmann.com 372 in which Tribunal confirmed the order of the Commissioner of Income Tax(Appeals) stating that no computation of fee for delay filing of TDS return while processing TDS returns under section 234E could be made for Assessment Years prior to 01.06.2015.

4. *The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the observation of the Hon'ble Supreme Court in. Commissioner of Income Tax, Vs Vatika Township Private Limited [2014] 49 taxmann.com249SC "Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless contrary intention appears, a legislature is presumed not to be intended to have a retrospective operation. Idea behind the rule is that current law should govern current activities".*

5. *The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the' decision of the Pune Tribunal in the case of Maharashtra Cricket Association Vs Deputy Commissioner of Income Tax-TDS, Ghaziabad, which clearly held that provisions of Section 234E is not applicable to a period covered in Assessment Years 2013-14 and 2614-15.*

6. *The Learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the amendments made in Section 200A of the Income Tax Act by Finance Bill 2015 is retrospective in nature and' does not applies to Assessment Years prior to 01.06.2015.*

7. *The Appellant prays that he may be permitted to raise supplementary and additional grounds of appeal at the time of hearing.*

8. *The appellant therefore prays that suitable relief may be give I by deleting the levy of late filing U/s 234E of Rs.2,07,970/-."*

6. The assessee relied on the grounds raised. The learned Departmental Representative supported the orders passed by the Income-tax authorities.

7. At the very outset, I noticed that the issue raised in this appeal is covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of

M/s.Sarala Memorial Hospital v. ITO (TDS) in WP(C) No.37775 of 2018 (judgment dated 18th December, 2018). The Hon'ble High Court had held that fees u/s 234E of the I.T.Act could not have been computed for assessment prior to 01.06.2015. The relevant finding of the Hon'ble High Court reads as follow:-

"9. Interpreting Section 200A and Section 234E, the Karnataka High Court has held in Fatheraj that when the statute confers no express power under section 200A before 01.06.2015 on the authority either to compute and collect any fee under section 234E, the demand for the period before 01.06.2015 could not be sustained. Fatheraj in facts observes:

"14. We may now dell 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(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 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 1.6.2015. It was submitted that when no express authority was conferred by the statute under section 200A prior to 1.6.2015 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 1.6.2015 could not have been made."

10. But the Gujarat High Court has taken a contrary stand in Rajesh Kourani, It has held:

"In plain terms, Section 200A is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments which are, as noted earlier. arithmetical or prima fade in nature. With effect from 1.6.2015, this provision specifically provides for computing the fee payable under Section 234E. On the other hand, Section 234E is the charging provision creating a charge for levying fee for certain defaults in filing the statements. Under no

circumstances a machinery provision can override or overrule a charging provision. Section 200A does not create any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When Section 234E has already created a charge for levying fee that would thereafter not have been necessary to have another provision creating the same charge. Viewing Section 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under section 234E for late filing of the statements."

11. *There is a cleavage in judicial opinion. But I am afraid, elaborate as the judgment may be in Rajesh Kourani, it does not seem to have considered the Circular No.19 of 2015, which in para 47.3 clarifies :*

"47.3 finance (No.2) Act, 2009 inserted section 200A in the Income-tax Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 234E was inserted after the insertion of section 200A of the Income-tax Act, the existing provisions of section 200A of the income Tax Act did not provide for determination of fee payable under Section 234E of the Income Tax Act at the time of processing of TDS statements. Therefore, the provisions of section 200A of the Income Tax Act has been amended so as to enable computation of fee payable under Section 234E of the Income Tax Act at the time of processing of TDS Statement under Section 200A of the Income Tax Act."

12. *Further, in para 47.20, the Circular has clearly emphasized that these amendments would take effect only from 1st June, 2015. Under those circumstances, I hold that the amendment is prospective and the demand under Exts.P1 to P6 demand notices cannot be sustained.*

I, accordingly, set aside the Exts. P1 to P6 demand notices. No orders on costs."

8. In the instant case, the assessment year being 2013-2014, there cannot be any levy of fees u/s 234E of the I.T.Act in view of the above judgment of the Hon'ble High Court. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.
Order pronounced on this 10th day of June, 2020.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 10th June, 2020
Devadas G*

Copy to :

1. The Appellant
2. The Respondent
3. The CIT(A), Thiruvananthapuram.
4. The Pr.CIT, Thiruvananthapuram.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi