IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.2621/Bang/2019 : Asst.Year 2013-2014
ITA No.4/Bang/2021 : Asst.Year 2014-2015
ITA No.5/Bang/2021 : Asst.Year 2015-2016

M/s.Elite India Constructions Private Limited, No.59, 36th Main 4th Cross, BTM Layout Bangalore – 560 068. **PAN : AABCE6720H.**	v.	The Commissioner of Income Tax (Appeals) – 9, Bengaluru.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Smt.Priyadarshini Besaganni, JCIT

Date of Hearing : 22.12.2021		**Date of Pronouncement : 23.12.2021**

O R D E R

Per George George K, JM

These appeals at the of the assessee are directed against consolidated order of the CIT(A) dated 08.08.2019. The relevant assessment years are 2013-2014, 2014-2015 and 2015-2016.

2. Identical grounds are raised in these appeals. The grounds raised read as follows:-

> *"1. The learned Commissioner Appeals has erred in passing the impugned order. The impugned order is bad in law and is liable to be quashed.*
>
> *(a) In any case for income tax erroneous assumption of jurisdiction.*
>
> *2. The commissioner has failed to comply with principles of natural justice.*

3. The order of the learned Commissioner of Income Tax Appeals is so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

4. The learned Commissioner of Income Tax Appeals has erred in upholding the order not passing as a separate order under section 234E levying fee for delay in filing the statement under section 200A of the Income Tax Act, 1961.

5. That on the facts and circumstances of the case, the learned Commissioner Appeals was not justified in not condoning the delay and giving the opportunity to explain.

6. That on the facts and circumstances of the case, the learned Commissioner Appeals was not justified in not condoning the delay and giving the opportunity to explain.

It is respectfully submitted that we may be permitted to add, delete and / or put forward any other grounds and fact of appeal and other related points at the time of hearing."

3. The brief facts of the case are as follows:

The assessee is a private limited company, engaged in the business of running hotels, etc. For the assessment years 2013-2014, 2014-2015 and 2015-2016, the assessee filed TDS returns in Form 26Q and Form 24Q for various quarters belatedly. The Assessing Officer levied fees and interest u/s 234E r.w.s. 200A of the I.T.Act for late filing of Form 26Q and 24Q of the said quarters.

4. Aggrieved by the orders passed by the Assessing Officer, the assessee filed appeals before the first appellate authority. The CIT(A) dismissed the appeals of the assessee. The CIT(A) for thirteen quarters mentioned in the table at page 7 and 8 of the impugned order, held that revised statements were filed

after 01.06.2015, hence the judgment of the Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. reported in 289 CTR 602 (Kar.)* would not have application. For the remaining eight quarters mentioned in the table at page 10 of the impugned order, the CIT(A) held that the delay is more than two years and the assessee has not brought out sufficient cause for delay.

5. Aggrieved by the order of the CIT(A), the assessee has filed these appeals before the Tribunal. None was present on behalf of the assessee.

6. The learned Departmental Representative relied on the order of the CIT(A).

7. We have heard the learned DR and perused the material on record. There was a delay in filing the appeals before the CIT(A). The assessee had filed application for condonation of delay vide its letter dated 05.07.2019. The relevant extraction of the same reads as follows:-

> *"I request you to kindly condone the delay in filing of the appeal against late filing fee u/s 234E before your Honour, as my father was not keeping good health during the period September 2013 to August 2015, being the only one to my father, I had frequently accompany him to Chennai for medical treatment.*
>
> *During the period of September 2013 to August 2015, my hotel project was under implementation and I also did not have regular fulltime account to take care of the TDS returns was undertaken to an outsourced agency as we were not familiar with the TRACES procedures and I was very much disturbed due to my father's chronic illness.*

> *Under the circumstance I request you to kindly condone the delay of above 04 years 09 months (FINANCIAL YEAR 2013-14), 3 years 02 months (FINANCIAL YEAR 2014-15) and 03 years 02 months (FINANCIAL YEAR 2015-2016) by allowing the appeal produced your good selves."*

7.1 Further, at the time of hearing it was submitted that in view of the judgment of the Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)*, demand u/s 234E of the Act based on the intimation u/s 200A of the Act relating to the period prior to assessment year 2016-2017 is impermissible. It was stated that the assessee was not given proper legal advice in time and consequently the appeals were filed belatedly. The Hon'ble Apex Court in the case of *Collector, Land Acquisition v. MST.Katiji and Others (1987) 167 ITR 471 (SC)* had held that when substantial justice and technicality are pitted against each other, the cause of substantial justice deserves to be preferred. The relevant finding of the Hon'ble Apex Court reads as follows:-

> *" "Every day's delay must be explained" does not imply a pedantic approach. The doctrine must be applied in a rational, common sense and pragmatic manner.*
>
> *The doctrine of equality before law demands that all litigants, including the State as litigant, are accorded the same treatment and the law is administrated in an evenhanded manner. There is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay.*
>
> *When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to*

have a vested right in injustice being done because of a non-deliberate delay."

7.2 The Hon'ble Apex Court in the case of Improvement Trust v. Ujagar Singh (2010) 6 SCC 786 had held that ordinarily the matter should be disposed of on merits and not on technicality. It was held by the Hon'ble Apex Court that justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it on technicalities and that too at the threshold. It was further held by the Hon'ble Apex Court that unless the malafides are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the instant case, out of 21 quarters, for 8 quarters the CIT(A) held that the assessee has not brought out sufficient cause for delay. Admittedly, for 8 quarters the issue is directly covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)*. The assessee has filed application for condonation of delay. However, the CIT(A) without commented on above applications, states that the assessee had not brought out sufficient reasons to condone the delay (for only 8 quarters out of 21 quarters). Therefore, we hold that the CIT(A) has erred in dismissing the appeal pertaining to 8 quarters on the ground of delay in filing the appeal before him.

7.3 The Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)*, had held that demand u/s 200A for computation of intimation for

payment of fees u/s 234E of the Act could not be made for the period of the respective assessment years prior to 01.06.2015. The relevant finding of the Hon'ble High Court reads as follows:-

> *"In view of the aforesaid observations and discussion, two aspects may transpire one, for section 234E providing for fee and given privilege to the defaulter if he pays the fee and hence, when a privilege is given for a particular purpose which in the present case is to come out from rigors of penal provision of section 271H(1)(a), it cannot be said that the provisions of fee since creates a counter benefit or reciprocal benefit in favour of the defaulter in the rigors of the penal provision, the provisions of section 234E would meet with the test of quid pro quo.*
>
> *However, if section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under section 200A which has been brought about with effect from 1-6-2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, 0whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the meaner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under section 234E, the Parliament also provided for its utility for giving privilege under section 271 H(3) that too by expressly putting bar for penalty under section 272A by insertion of proviso to section 272A(2), it can be said that a particular set up for imposition and the payment of fee under section 234E*

was provided but, it did not provide for making of demand of such fee under section 200A payable under section 234E. Hence, considering the aforesaid peculiar facts and circumstances, the contention of the respondent-revenue that insertion of clauses (c) to (f) under section 200A(1) should be treated as retroactive in character and not prospective is unacceptable.

It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, it is found that substitution made by clauses (c) to (f) of sub-section (1) of section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under section 200A for computation and intimation for the payment of fee under section 234E could not be made in purported exercise of power under section 200A by the respondent for the period of the respective assessment year prior to 1-6-2015."

7.4 The assessing Officer cannot make any adjustment other than one prescribed in section 200A of the Act. Prior to 01.06.2015, there was no enabling provision in section 200A of the Act for making adjustment in respect of statement filed by the assessee with regard to tax deducted at source by levying fees u/s 234E of the Act. The Parliament for the first time enabled the Assessing Officer to make adjustment by levying fees u/s 234E of the Act with effect from 01.06.2015. The Hon'ble jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)*, has held that adjustment cannot be made by the A.O. for the respective assessment year prior to 01.06.2015. Therefore, for the relevant assessment years, namely, A.Ys 2013-2014, 2014-2015 and 2015-2016, the levy of tax u/s 234E of the Act is impressible going by the dictum laid down by the Hon'ble

jurisdictional High Court in the case of *Sri Fateharaj Singhvi v. Union of India & Ors. (supra)*. It is ordered accordingly.

8. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 23rd day of December, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 23rd December, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A)-9, Bengaluru.
4. The CIT, TDS, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore