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

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

ITA No.519/Bang/2021 : Asst.Year 2013-2014
ITA No.520/Bang/2021 : Asst.Year 2013-2014
ITA No.521/Bang/2021 : Asst.Year 2013-2014
ITA No.522/Bang/2021 : Asst.Year 2013-2014
ITA No.523/Bang/2021 : Asst.Year 2014-2015
ITA No.524/Bang/2021 : Asst.Year 2014-2015
ITA No.525/Bang/2021 : Asst.Year 2014-2015
ITA No.526/Bang/2021 : Asst.Year 2014-2015
ITA No.527/Bang/2021 : Asst.Year 2014-2015
ITA No.528/Bang/2021 : Asst.Year 2015-2016

M/s.Sameer Granites Pvt.Ltd. No.32, Thulasi Building, 2nd Floor Margosa Road, 15th Cross Malleswaram Bangalore – 560 003. **PAN : AAFCS3303Q.**	v.	The Assistant Commissioner of Income-tax, CPC (TDS) Ghaziabad.
(Appellant)		(Respondent)

Appellant by : Sri.Siddesh Nagaraj Gaddi
Respondent by : Sri.Sankar Ganesh K, JCIT-DR

Date of Hearing : 22.12.2021		**Date of Pronouncement : 30.12.2021**

O R D E R

Per Bench :

These appeals at the instance of the assessee are directed against ten orders of the CIT(A), all dated 09.09.2021 (except for ITA No.519/Bang/2021, where the impugned order of the CIT(A) is dated 23.09.2021). The orders of the CIT(A) arise out of orders of CPC, TDS, passed u/s 200A of the I.T.Act. The relevant assessment years are 2013-2014, 2014-2015 and 2015-2016.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidated order. The identical grounds are raised in these appeals and they read as follows:-

> *"1. The impugned order upholding intimation under section 200A of the Act is erroneous and contrary to the law and facts, against weight of evidence and probabilities of the case;*
>
> *2. The Learned CIT(A) has erred in law and on facts in not condoning the delay in filing the appeal;*
>
> *3. The Learned CIT(A) has failed to appreciate that the delay in filing appeal is not intentional, thereby erred in not appreciating that the delay is bonafide;*
>
> *4. The Learned CIT(A) has erred in upholding levy of late fee by way of processing of TDS statement, as provisions of section 200A of the Act does not cover default in payment of late fee under section 234E of the Act with respect to statements filed prior to 01.06.2015;*
>
> *5. The Learned CIT(A) has erred upholding levy of late fee for the period prior to 01.06.2015;*
>
> *6. The Learned CIT{A) has erred in upholding levy of late fee without there being any authority as ruled by the jurisdictional High Court in the case of Fatheraj Singhvi vs. Union of India [2016j 289 CTR 602 (Karnataka);*
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> *7. The levy of fee is unjust considering the discrimination in the time period allowed to file quarterly TDS statements of government dedicators and non-government dedutor;*
>
> *8. The Learned CIT(A) has erred in not appreciating that the AO has erred in not giving reasonable opportunity of being heard before imposing such late fee as the levy of late fee is punitive in nature;*
>
> *9. The late fee specified under section 234 E has to be levied only from the date of payment of tax deducted at source followed by the date of filing of returns but not from the due date of filing of statement considering the fact that TDS*

statements cannot be filed before payment of taxes. On this ground, the appellant is relying on the following case laws.

9.1 Powal creative vision (P) Limited v. Ad.CIT – 55 DTR 241 (Mumbai ITAT)

9.2 GSL Nova Perto Chemicals Limited vs. JCIT ITAT No.2277/Ahmedabad/202.

10. The learned CIT(A) and AO have erred in not appreciating that there was no intentional delay in filing of the quarterly statement for the subject period relevant to the appeal.

On the basis of above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the appellant, be quashed and relief sought be granted."

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

The assessee filed belatedly the TDS statements in Form 24Q and 26Q for various quarters for assessment years 2013-2014, 2014-2015 and 2015-2016. The statements were processed by the Assessing Officer vide orders passed u/s 200A of the I.T.Act, wherein fee u/s 234E of the Act was levied for late filing of TDS statements. The details of levy u/s 234E of the Act, the period for which the levy was made, are detailed as under:-

Assessment Year	Net payable (in Rs.)
2013-2014 26Q2	14,719
2013-2014 26Q3	9,757
2013-2014 26Q4	17,516
2013-2014 24Q2	52,480
2014-2015 26Q1	3,230
2014-2015 26Q2	2,650
2014-2015 24Q1	60,800
2014-2015 24Q2	42,400
2014-2015 24Q3	24,000
2015-2016 26Q4	2,400
Total	2,29,952

4. Aggrieved by the orders passed u/s 200A of the Act for various quarters levying fees u/s 234E of the Act, the assessee preferred appeals before the first appellate authority. All the appeals filed before the first appellate authority was barred by limitation. The assessee had filed petitions for condonation of delay accompanied by affidavits of the Director of the assessee-company stating therein the reason for belated filing of the appeals before the CIT(A). The CIT(A) dismissed the appeals *in limine* without condoning the delay.

5. Aggrieved by the orders of the CIT(A) for assessment years 2013-2014, 2014-2015 and 2015-2016, the assessee has filed these appeals before the Tribunal. The learned AR has filed a paper book enclosing therein brief written submission, the case laws relied on and the snapshot of intimation issued u/s 200A of the Act. The learned AR submitted that the orders passed u/s 200A of the Act by the TDS CPC were never served physically or otherwise on the assessee. It was stated that the intimation u/s 200A of the Act was downloaded from the office of the Assessing Officer by the Tax Professional, who did not communicate the same to the assessee. It was submitted that since the Tax Professional had left the services, the assessee is not able to correctly state when the intimation u/s 200A of the Act was downloaded. It was stated that only when the demands were sought to be collected by the Revenue, the assessee came to know of these orders and thereafter immediately, the appeals were filed. The learned AR submitted that there was sufficient cause for delay

and relied on various case laws for taking a liberal view while considering the petition for condonation of delay. On merits, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Sri Fatheraj Singhvi v. Union of India & Ors. reported in 289 CTR 602 (Kar.)*.

6. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

7. We have heard rival submissions and perused the material on record. The issue on merits, namely, the levy of late fee u/s 234E of the Act through an intimation u/s 200A of the Act for the period prior to 01.06.2015 has been decided in favour of the assessee by the judgment of the Hon'ble Karnataka High Court in the case of *Sri Fatheraj Singhvi v. Union of India & Ors. (supra)*. The relevant portion of the judgment 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."

7.1 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 impermissible 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)*.

7.2 On issue of condonation of delay, the learned AR submitted that the orders passed u/s 200A of the Act was not received by the assessee. The assessee got to know of the levy of penalty only when recovery notice's were served. It is settled principle that expression "sufficient cause" ought to be interpreted in a manner which subserve and advances the cause of substantial justice. The Hon'ble Apex Court in the case of State of West Bengal v. The Administrator, Howrah Municipality reported in AIR 1972 page 749 (SC) had held that the scope of expression "sufficient cause" for the condonation of delay should receive a liberal construction so as to advance the substantial justice. The Hon'ble Apex Court in the case of N.Balakrishnan v. M.Krishmnamurthy AIR

1998 page 3222 had condoned the delay of 883 days in filing the application for setting aside the *ex parte* decree for which application for condonation of delay was filed. In the said case, the Trial Court had found that there was sufficient cause made out for condonation of delay and had condoned the delay. However, the Hon'ble High Court reversed the order of the Trial Court. The Hon'ble Apex Court while restoring the order of the Trial Court had observed in para 8, 9 and 10 as under:-

> *"The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause."*

7.3 The Hon'ble Apex Court further observed that rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics, but seek the remedy promptly. The Hon'ble Court further observed that refusal to condone the delay would result in foreclosing a suitor for putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate.

7.4 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."*

7.5 The Hon'ble Apex Court in the case of Improvement Trust v. Ujagar Singh & Ors. in Civil Appeal No.2395 of 2008 (judgment dated 9th June, 2010) 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.

7.6 In the instant case, the assessee had submitted that the orders passed u/s 200A of the Act were never served on the assessee physically or otherwise. It was stated that intimation u/s 200A downloaded from the office of the Assessing Officer by the Tax Professional, was not communicated to the

assessee and since the Tax Professional had left the service of the assessee, the assessee has not able to correctly state when the intimation u/s 200A of the Act was downloaded. It is stated that only when demand were sought to be collected by the Revenue, the assessee came to know of the order passed u/s 200A of the I.T.Act. We are of the view that the submissions of the assessee cannot be brushed aside as false. In the of the instant case, *prima facie*, the issue on merits is seen covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court, cited supra. Taking note of judicial pronouncement where expression "sufficient cause" has received a liberal construction, we condone the delay of filing these appeals before the CIT(A). We deem it appropriate to remit the issue of levy of fee u/s 234E of the Act through intimation u/s 200A of the Act to the file of the CIT(A) (since the CIT(A) has not decided the issue on merits). The CIT(A) shall afford a reasonable opportunity of being heard to the assessee before a decision is taken in this matter. It is ordered accordingly.

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

Order pronounced on this 30th day of December, 2021.

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

Bangalore; Dated : 30th December, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) NFAC, Bengaluru.
4. The CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore