

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 911/JP/2017  
निर्धारण वर्ष / Assessment Years : 2016-17

Government Secondary school Kumharia, 1 Kumharia, Ajmer.	बनाम Vs.	ACIT, CPC (TDS), Ghaziabad.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JDHG 12671 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Praveen Gurjar (C.A.)  
राजस्व की ओर से / Revenue by : Ms Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/04/2022  
उदघोषणा की तारीख / Date of Pronouncement : 12/04/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax, Ajmer [hereinafter referred to as (CIT)] dated 27.09.2017 for the AY 2016-17.

2. The assessee has raised the following grounds:-

*"1. The assessee has Filed an appeal with Ld CIT(appeals) Ajmer against the intimation dated 25/03/2016 issued under section 200A OF IT ACT 1961 Levying late filing Fee of Rs 32700/- U/s 234 by ACIT, CPC(TDS) Ghaziabad(TDS return Relates to 24Q 3<sup>rd</sup> Qtr.)*

2. As per provision of Sec. 234 E late fee cannot be recovered for TDS statements which were due for F.Y 2011-12 as well on TDS statements late fee cannot be recovered for F.Y 12-13 if not collected at the time of delivering TDS statements to the deptt. Provision of Sec. 234 E has been made applicant with effect from 1<sup>st</sup> July 2012. It states that "Amount of late fee shall be paid before delivering a TDS statement". It means that any late fee should have fee deposited just at the time of delivering TDS statements & not later than this. The authorized TIN-NSDL centre which accepted the TDS statements also accepted there without late fee, as well as the software utility of the TDS deptt. It self accepted these without late fee.

3. The Tax was deducted & Deposited in time, the only default is delay in filing of the return ,the alleged delay in filing the TDS statement has not resulted in any loss of revenue to the department and, therefore, the default, if any, was purely venial breach. The assessee was being \_\_\_\_\_ GOVT. ORGANISATION \_\_\_\_\_ working in public interest and there was no mala fide intention of not filing the TDS return at source within time. That when the TAX has been deposited in time. There could not have any object or intention as the part of assessee not to submit the return in time.

4. It is also relevant to note that the law has not made any person responsible, to deposit late fee, in case of default in depositing late fee along with TDS statement, which can be inferred from the provisions of Sec. 204 of the Act Section 204 particularly states that "for the purposes of Sec. 190 to Sec. 203 and for Sec. 285 of the Act the following persons would be responsible", so it is clear that for the purpose of Sec. 234E none of the person has been made responsible, therefore if any late fee is due and not deposited along with the TDS statement none can be held responsible to deposit it. In our case the deductor is Government so as Per law Government cannot be held responsible person to deposit it.

5. In the facts & circumstances of the case the learned A.O. erred in imposing late fee without appreciating the facts & circumstances of the case and hence the same should be deleted.

6. That the order is bad in law.

*7. The appellant carves leave to add, amend, alter, vary and or withdraw any or all the above grounds of appeal with the prior permission of the chair.”*

3. Brief facts of the case are that the assessee filed his TDS return 24Q for the Quarter Third of F.Y. 2015-16. The assessee received intimation u/s 200A of the IT Act from Id. DCIT-CPC TDS, amounting of Rs. 32,700/- on A/c of late filing fees under section 234E.

4. The AO assessed that a sum of Rs. 32,700/- (including interest) has been determined to be payable by the assessee in respect of statement filed by him. The sum has been determined u/s 200A of the Income Tax Act, 1961 in respect of the TDS statement as considered. The details of defaults are given in the ‘justification report’ which is available in your account on TRACESS ([www.rdsce.gov.in](http://www.rdsce.gov.in)).

The Brief summary of sum payable is mentioned as below on sample basis:

Sl. No.	Type of Default	Default Amount	Amount reported as ‘interest/others’ claimed in the statement (Rs.)	Payable (Rs.)
1.	Short payment	0.00	0.00	0.00
2.	Interest on payments defaults u/s 201(1A)/206C(7)			
2(a)	Interest on short payment	0.00	0.00	0.00
2(b)	Interest on late payment	0.00	0.00	0.00
3.	Interest on late deduction/collection default u/s 201(1A)/206C(7)	0.00	0.00	0.00
4.	Late Filing fee u/s 234E	32,700/-	0.00	32,700/-
Payable (Rs.)				32,700/-

Rounding-Off (to the nearest multiple of ten Rupees) (Rs.)	0.00
Net payable (Rs.)	32,700/-

The AO had made the defaults at S. No. 1 in the table above are on account of the fact that assessee have not paid or after so deducting, failed to pay the whole or any part of the tax as per the Income Tax Act, 1961. The AO held that the assessee is requested to pay the default amount as per Sl. No. 1 & 2(a) in the table above, within the calendar month of the order pass date. In case of further delay in payment, assessee is advised to recalculate the interest under section 201(1A) for Sl. No. 2(a) and pay accordingly.

5. Being aggrieved by the AO the assessee preferred an appeal before the ld. CIT(A) and the findings are reproduced as under:-

*“3.1 I have gone through the order, statement of facts and grounds of appeal carefully. It is seen from the intimation issued u/s 200A that the TDS statement for the 3<sup>rd</sup> quarter of the F.Y. 2015-16 was processed on 29.07.2016. With effect from 01.06.2015, adjustment in respect of the fee paid u/s 234E can be made under Clause © of Sub-section 1 of Section 200A. As per TDS return of the appellant has been processed on 29.07.2016, therefore, I am of the considered view that adjustment made under section 200(A)(1)(c) in respect of the fee levied u/s 234E is valid and in accordance with the provisions of law. Hence, this ground of appeal is dismissed.”*

6. Aggrieved by the CIT(A) order, the assessee is in appeal before us. Before the CIT (A), that the assessee has reiterated his submissions, which was not considered by the CIT(A). Before us, the ld. AR for the assessee submitted that the AO erred in imposing late fee without appreciating the facts and circumstances of the case and there was a reasonable cause for delay in filing the e-TDS statement.

7. On the other hand, the Id. CIT-DR Ms Runi Pal relied on the order of Id. CIT(A) and stated that Id. CIT(A) has passed exhaustive order explaining the provisions of the Act and further the Id DR has submitted that the levy of late fee U/s 234E of the Act is mandatory and consequential in nature and therefore, the reasonable cause for default of not submitting the TDS statements cannot be considered a ground for deletion of such levy. The Ld DR has further contended that this is not a penalty levied under Chapter-XXI of the Act which can be deleted , if the assessee explained a reasonable and bona fide cause.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Sec. 200A prescribes processing of statements of tax deducted at source and Sec. 234E provides for fees for default in furnishing various statements. Further Sec. 200(3) provides for requirement to file TDS statement within prescribed time. In the case of assesee there is delay in respect of 3<sup>rd</sup> quarter of F.Y. 2015-16, the assesee filed quarterly statement on 25.07.2016 and the same was processed on 29.07.2016 and therefore, there was a delay respectively for 3<sup>rd</sup> quarter of F.Y. 2015-16. The assessee has raised objection against the validity of the order passed by the A.O and the intimation were issued after making adjustment on account of late fee U/s 234E of the Act.

9. We are of the opinion that the Jaipur Bench in the following decision [2020] 117 Taxmann.Com 337 (Jaipur - Trib.) in Block Development Officer Vs. Assistant Commissioner of Income-tax, CPC-TDS and in [2017] 77 taxmann.com 244 (Kerala) High Court Of Kerala in Sree Narayana Guru Smaraka Sangam Upper Primary School Vs. Union of India also have held that fee can be levied u/s 234E in terms of section 200A, where the date of filing of

TDS statement and date of intimation are much after 1-6-2015. In the light of the above discussion we hold that the Id. CIT(A) is justified in confirming the late fee levied by the AO u/s. 200 A r.w.s. 234 E since the defaults made by the assessee are after 1-6-2015. Accordingly we uphold the order of the Ld. CIT(A) and the fee levied u/s. 234 E, is directed to be confirmed.

In the result, the appeal of the assessee is dismissed

Order pronounced in the open Court on 12 /04/2022.

Sd/-

( राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 12/04/2022.

Sd/-

(एस.सीतालक्ष्मी)  
(Dr. S. Seethalashmi)  
न्यायिक सदस्य / Judicial Member

**\*Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Government Secondary school Kumharia, Ajmer.
2. प्रत्यर्थी / The Respondent- ACIT, CPC (TDS), Ghaziabad.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 911/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar