

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1198/Hyd/19	2017-18	Sri Venkateshwara College, Suryapet [PAN: AAKTS8319J]	Income Tax Officer, TDS Ward-2(2), Hyderabad
1199/Hyd/19	2018-19		

For Assessee : Shri S.Rama Rao, AR

For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 19-01-2021

Date of Pronouncement : 03-02-2021

ORDER

PER BENCH :

These two assessee's appeals for AYs.2017-18 & 2018-19 are directed against the CIT(A)-8, Hyderabad's order dated 22-05-2019 passed in appeal Nos.10147 & 10148/CIT(A)-8/Hyd/2018-19, involving proceedings u/s.200A of the Income Tax Act, 1961 [in short, 'the Act']

2. The assessee's sole substantive grievance raised in the instant appeals seeks to reverse both the lower authorities' action in levying late fee of Rs.7,600/- and Rs.13,800/- u/s.234E of the Act; respectively. The CIT(A)'s lower appellate discussion to this effect, reads as under (extracted from AY.2017-18):

“4. In the appeal, the main contention of the AR is that the provision to include late fee u/s.234E in the intimation u/s. 200A of the Act came into effect only through the Finance Act, 2015 w.e.f.1.6.2015. Section 200A enabling the AO to determine the late fee u/s. 234E brought about w.e.f. 1.6.2015 is prospective in nature and the AO was not empowered to charge late fee u/s.234E for the period prior to 1.6.2015.

5. The submissions of the appellant, statement of facts, grounds of appeal and orders u/s.200A have been perused. It is noted that prior to 01.06.2015, there was no enabling provision for raising demand under section 234E in order u/s. 200A. This issue has been recently decided by the Hon'ble ITAT, Hyderabad in the case of M/s. Terra Infra Development Limited v/s. ITO (TDS) Ward 2(3), Hyderabad in ITA Nos.1876 & 1875/Hyd/2017 dated 03.10.2018 and in other judgements relied upon by the appellant, and the appeals on this issue upto A.Y. 2015-16 have been allowed, since they are covered by the said judgement of jurisdictional ITAT. However, the appeal filed by the appellant for the assessment year 2017-18 (i.e. F.Y.2016-17) (24Q - Q3) does not fall under the purview of, and is not covered by, any of these judgements / case-laws. The first quarter of A.Y. 2016-2017, and all the quarters after that, are not covered by these judgements, since the first quarter of the A.Y. 2016-2017 ends on 30.06.2015 and the amendment is effective from 01.06.2015. With regard to TDS returns pertaining to the period after 01.06.2015, the AO was empowered by the statute to levy late fee u/s.234E in the intimation u/s. 200A, and the fees levied u/s. 234E is therefore clearly leviable. This issue has been decided by the Hon'ble ITAT, Cuttack in the case of TB and ID Hospital VS ITO in ITA Nos.323 to 332/CTK/2018 dated 27.08.2018, wherein it has been held that:

"8. We on perusal of all the appeals under consideration find that the issue involved in the appeals i.e ITA Nos.323 to 331/CTK/2018 are covered by the above orders of the Tribunal as the amendment to Section 200(3) of the I.T. Act was made only with effect from June 1, 2015. Except for the Quarter-1 in the assessment year 2016-2017 (i.e.ITA No.332/CTK/2018), all the quarters i.e. Quarter 4 in the A. Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015-2016 are coming under the purview of amendment to section 200(3) of the Act. Therefore, the fee levied u/s.234E of the Act while processing the statement of tax deducted at source was beyond the scope provided under Section 200A of the Act. Accordingly, we respectfully follow the judicial precedent and set aside the orders of lower authorities and delete the levy of fee u/s.234E of the Act in Quarter 4 in the A.Y.2013-2014, for Quarters 1 to 4 in the assessment year 2014-2015 and for Quarters 1 to 4 in the assessment year 2015- 2016 and allow the appeals i.e ITA Nos.323 to 331/CTK/2018 filed by the assessee.

9. With regard to the appeal filed by the assessee for Quarter-1 in assessment year 2016-2017 (i.e. ITA No.332/CTK/2018), we considering the amendment to Section 200(3) of the Act and applicability to the present case of the assessee does not fall under the purview of amendment as the first quarter for the assessment year 2016-2017 ends on 30.06.2015 and the amendment is effective from 01.06.2015. Therefore, we are of the opinion that the assessee is liable to pay the late fee as levied for the assessment year 2016-2017. Accordingly, we uphold the orders of lower authorities and dismiss the ground of appeal of the assessee”.

5.1 The jurisdiction tribunal, ITAT Hyderabad, has also recently held in the case of *M/s. Satya Surya Aluminium Industries Ltd. Vs. ITO (TDS), Ward 2(2), Hyderabad* in ITA No. 444 to 447/H/18 dated 29.01.2019, that

“with regard to TDS returns filed after 01/06/2015, the fees levied u/s 234E is applicable”.

5.2. *Considering the facts, issues and circumstances of the instant case and respectfully following the decisions of the Hon'ble ITAT referred to supra, the appellant is liable to pay the late fee as levied for the assessment year 2017-18. Hence, the ground of appeal for the A.Y.2017-18 (24Q-Q3) is dismissed”.*

3. It is therefore clear that the Ld.CIT(A) has followed various case law to hold that the impugned statutory provision, very much applies for the relevant previous year 2017-18. We thus find no reason to interfere in the impugned levy of late fee u/s.234E of the Act.

4. Both the appeals of assessee are dismissed.

Order pronounced in the open court on 3rd February, 2021

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Hyderabad,
Dated: 03-02-2021

Copy to :

1.Sri Venkateshwara College, 1-1-1, Amaravadi Nagar, Suryapet.

2.The Income Tax Officer, TDS Ward-2(2), Hyderabad.

3.CIT(Appeals)-8, Hyderabad.

4.CIT(TDS)-Hyderabad.

5.D.R. ITAT, Hyderabad.

6.Guard File.