IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)

(THROUGH VIDEO CONFERENCE)

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

And

SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5921/Del./2016
ASSESSMENT YEAR : 2015-16

Sub Divisional office, Civil Panipat, Secretariat, Panipat	Vs.	ITO, TDS Karnal

(PAN : TRKSO7590C)

(APPELLIANT) (RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri Prakash Dubey, Sr. DR

Date of Hearing : 14.07.2021
Date of Order : 26.07.2021

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Sub Divisional Office Civil Panipat (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 02.09.2016 passed by the Commissioner of Income-tax (Appeals)-Karnal qua the assessment year 2015-16 on the grounds inter alia that :

> ***"1. That on the facts and circumstances of the case and law on the point, the Ld. Assessing Officer has erred in passing the order/ intimation u/s 200A of the Income Tax Act, 1961 for levy of late filing fee for Rs. 72,200 u/s 234E of the Act as the same is beyond the scope of permissible adjustment contemplated as per the provisions of section 200A of the Income Tax Act, 1961 and Hon'ble CIT(A) erred in confirming the same. Hence, the order passed by the Ld. Assessing Officer and Hon'ble CIT(A) is against the provisions of law and liable to be quashed.***
> ***2. The appellant craves leave to add to, alter, modify, substantiate, delete and / or to rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises."***

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is a local body in the name and style of Sub Divisional Office Civil Panipat and was required to deduct and deposit TDS as per the provisions of Income Tax Act. Assessee has duly deducted and deposited TDS of Rs. 72,200/- for 1st Quarter of FY 2014-15 on salary to the credit of government and filed the TDS statement on 14.11.2015. Assessing Officer after processing the TDS statement raised a demand of Rs. 72,200/- by way of intimation u/s 200A of the Act vide order dated TDS/1415/24Q/D/100017191410, 27.11.2015 for delay in filing the TDS statement.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has confirmed the demand by dismissing the appeal. Feeling aggrieved the assessee has come up before the tribunal by way of filing the present appeal.

4. Assessee has not preferred to put in appearance despite issuance of the notices, consequently, we proceeded to decide the present appeal with the assistance of the ld. DR as well as on the basis of documents available on the file.

5. We have heard the ld. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, assessee has filed return / TDS statement on 14.11.2015 as against the due date i.e. 01.06.2015. It is also not in dispute that late fee has been filed u/s 234E for delay in filing the TDS statement. It is also not in dispute that assessee has already deposited TDS along with interest for delayed period.

7. In the backdrop of the aforesaid undisputed facts and circumstances of the case, we have gathered from the argument made by assessee before Ld. CIT(A) that assessee has challenged that provisions contained u/s 200A of the Act which empower AO to make addition on account of levy of late fee u/s 234E had no machinery provisions. The contention of the assessee is tenable.

8. When we examine the contentions raised by the ld. AR for the assessee before Ld. CIT(A) in the light of the provisions contained u/s 200A (1)(c) of the Act brought into Statute by the

Finance Act, 2015 w.e.f. 01.06.2015, there was no enabling/machinery provision for making such addition while processing the TDS statement / return u/s 200A of the Act.

9. Identical issue has been examined by the **coordinate Bench of the Tribunal in the case of Supreme Brahmaputra (JV) vs. TDS CPC, Ghaziabad in ITA No.6706 to 6708/Del/2019 order dated 31.08.2020** in the light of the decisions rendered by Hon'ble High Courts and coordinate Bench of the Tribunal by returning following findings :-

> ***"19. We find, identical issue had come up before the Tribunal in the case of Anjani Technoplast Ltd. vs. ACIT-TDS-CPC, vide ITA No.7931 to 7937/Del/2019 and batch of appeals for A.Y. 2013-14, 2014-15 and 2015-16. Vide order of even date, we have held that there is no delay in filing of the appeals by observing as under:-***
>
> > ***"22. So far as the delay in filing of the appeals before the CIT(A) is concerned, a perusal of the Form No.35 filed along with copy of order passed u/s 154 by the CPC shows that the date of order u/s 200A was 27th July, 2013 and the assessee filed the rectification application before the CPC and the order u/s 154 was passed on 6th February, 2019. The assessee has filed the appeal against the order passed u/s 154 on 26th February, 2019 which is well within the time. Even the ld.CIT(A) at para 4.2 of his order has also mentioned that the assessee has filed the appeal against the correction dated 6th February, 2019. However, the ld.CIT(A), without considering the facts properly, has held that there is inordinate delay in filing of the appeals before him and the assessee failed to submit explanation so as to justify the above delay for which he dismissed the appeals on account of delay in filing these appeals. In our opinion, there is no delay in the instant case and all these confusion arose because of some typographical error in the Form 35 where the assessee, instead of mentioning section 154, mentioned section 200A against the section and sub-section of the Income-tax Act, 1961. We, therefore, find merit in the***

argument of the ld. Counsel that there is no delay in filing of the above appeals.

23. Further, the Hon'ble Delhi High Court in the case of Remfry and Sons (supra) has held that procedural/technical mistakes could not stand in the way of imparting justice and the authority must allow opportunity to the assessee to rectify mistakes. Since, in the instant case, there was merely a technical mistake in wrong mentioning of the provision, therefore, we are of the considered opinion that this technical mistake should not stand in the way of imparting justice and, therefore, the order of the CIT(A) holding that there is delay in filing of these appeals is not correct. Accordingly, we hold that the assessee has filed the appeals well in time and there is no delay. The order of the CIT(A) on this issue is accordingly dismissed."

19.1 Since the facts of the case are identical, therefore, following similar reasonings we hold that there is no delay in filing of the appeals.

20. A perusal of the orders of the CIT(A) shows that he has confirmed the amount of late filing fee u/s 234E on the ground that the section 200A was amended by the Finance Act, 2015 w.e.f. 01.06.2015 and, therefore, the AO was empowered to levy late filing fee u/s 234E prior to 01.06.2015.

21. A perusal of the order of ld. CIT(A) shows that all these TDS statements were filed before 01.06.2015, therefore, the question that has to be considered is as to whether the CIT(A) was justified in confirming the levy of late fee u/s 234E for delay in filing of the TDS statements and interest u/s 220(2) of the IT Act, 1961. We find, identical issue had come up before the coordinate Bench of the Tribunal in the case of Udit Jain (supra). The Tribunal, after considering the decision of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi vs. UOI as well as the decision of the Hon'ble Gujarat High Court in the case of Rajesh Kourani vs. UOI reported in (2017) 83 taxmann.com 137, has decided the issue in favour of the assessee by observing as under:-

"9. We have heard the rival contentions and perused the record. The issue which needs to be adjudicated in these appeals is the charging of late filing fee u/s 234E of the Act while issuing the intimation u/s 200A of the Act. The case of the assessee before us is that where the legislature has inserted clause (c) to section 200A(1) of the Act w.e.f 01.06.2015, then in respect of the TDS statements which were filed under the respective sections of the Act, for the

period prior to 01.06.2015, no late filing fee could be charged u/s 234E of the Act, in the intimation issued u/s 200A of the Act. We find that the said issue has been adjudicated by the Hon'ble Karnataka High Court in Fatehraj Singhvi & Others vs Union of India (supra), which proposition has been applied by the Pune Bench of the Tribunal in Medical Superintendent Rural Hospital, DOBI BK vs DCIT (supra). The Tribunal had also taken note of the decision of Hon'ble Gujarat High Court in Rajesh Kourani vs Union of India (supra) and applying the proposition that where there was difference of opinion between Hon'ble High Courts on a particular issue and in the absence of any decision rendered by the Jurisdictional High Court, then the decision in favour of the assessee needs to be followed as held by Hon'ble Supreme Court in Vegetables Products Ltd. [1973] 88 ITR 192(SC). The relevant findings of the Tribunal are as under:-

> ***11. "We have heard the rival contentions and perused the record. The issue arising in the present bunch of appeals is against levy of late filing fees under section 234E of the Act while issuing intimation under section 200A of the Act, in the first bunch of appeals. The second bunch of appeals in the case of Junagade Healthcare Pvt. Ltd. is against order of Assessing Officer passed under section 154 of the Act rejecting rectification application moved by assessee against intimation issued levying late filing fees charged under section 234E of the Act. The case of assessee before us is that the issue is squarely covered by various orders of Tribunal, wherein the issue has been decided in respect of levy of late filing fees under section 234E of the Act, in the absence of empowerment by the Act upon Assessing Officer to levy such fees while issuing intimation under section 200A of the Act. The Tribunal vide order dated 21.09.2016 with lead order in ITA Nos.560/PN/2016 & 561/PN/2016, 1018/PN/2016 to 1023/PN/2016 in Maharashtra Cricket Association Vs. DCIT (CPC)-TDS, Ghaziabad, relating to assessment years 2013-14 and 2014-15 for the respective quarters deliberated upon the issue and held as under:-***
>
> > ***"34. Accordingly, we hold that the amendment to section 200A(1) of the Act is procedural in nature and in view thereof, the Assessing Officer while processing the TDS statements / returns in the present set***

> ***of appeals for the period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the intimation issued by the Assessing Officer under section 200A of the Act in all these appeals does not stand and the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted. The intimation issued by the Assessing Officer was beyond the scope of adjustment provided under section 200A of the Act and such adjustment could not stand in the eye of law."***

12. The said proposition has been applied in the next bunch of appeals with lead order in Vidya Vardhani Education and Research Foundation in ITA Nos.1887 to 1893/PUN/2016 and others relating to assessment years 2013-14 and 2014-15 vide order dated 13.01.2017 and also in Swami Vivekanand Vidyalaya Vs. DCIT(CPC)-TDS (supra) and Medical Superintendant Rural Hospital Vs. ACIT (CPC)-TDS in ITA Nos.2072 & 2073/PUN/2017, order dated 21.12.2017, which has been relied upon by the learned Authorized Representative for the assessee.

13. The Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra) had also laid down similar proposition that the amendment to section 200A of the Act w.e.f. 01.06.2015 has prospective effect and is not applicable for the period of respective assessment years prior to 01.06.2015. The relevant findings of the Hon'ble High Court are in paras 21 and 22, which read as under:-

> ***"21. 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, whether 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 manner 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 271H(3) that too by expressly put 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, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

22. 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, we find that substitution made by clause (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. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."

14. The Hon'ble High Court thus held that where the impugned notices given by Revenue Department under section 200A of the Act were for the period prior to 01.06.2015, then same were illegal and invalid. Vide para 27, it was further held that the impugned notices under section 200A of the Act were for computation and intimation for payment of fees under section 234E of the Act as they relate for the period of tax deducted at source prior to 01.06.2015 were being set aside.

15. In other words, the Hon'ble High Court of Karnataka explained the position of charging of late filing fees under section 234E of the Act and the mechanism provided for computation of fees and failure for payment of fees under section 200A of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under section 200A of the Act for computation and intimation for payment of late filing fees under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the Hon'ble High Court. In view of said proposition being laid down by the Hon'ble High Court of Karnataka (supra), there is no merit in observations of CIT(A) that in the present case, where the returns of TDS were filed for each of the quarters after 1st day of June, 2015 and even the order charging late filing fees was passed after June, 2015, then the same are maintainable, since the amendment had come into effect. The CIT(A) has overlooked the

fact that notices under section 200A of the Act were issued for computing and charging late filing fees under section 234E of the Act for the period of tax deducted prior to 1st day of June, 2015. The same cannot be charged by issue of notices after 1st day of June, 2015 even where the returns were filed belatedly by the deductor after 1st June, 2015, where it clearly related to the period prior to 01.06.2015.

16. We hold that the issue raised in the present bunch of appeals is identical to the issue raised before the Tribunal in different bunches of appeals and since the amendment to section 200A of the Act was prospective in nature, the Assessing Officer while processing TDS returns / statements for the period prior to 01.06.2015 was not empowered to charge late filing fees under section 234E of the Act, even in cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after June, 2015. Accordingly, we hold that intimation issued by Assessing Officer under section 200A of the Act in all the appeals does not stand and the demand raised by charging late filing fees under section 234E of the Act is not valid and the same is deleted.

17. Before parting, we may also refer to the order of CIT(A) in relying on the decision of Hon'ble High Court of Gujarat in Rajesh Kourani Vs. Union of India (supra). On the other hand, the learned Authorized Representative for the assessee has pointed out that the issue is settled in favour of assessee by the Hon'ble High Court of Karnataka in the case of Fatheraj Singhvi Vs. Union of India (supra). Since we have already relied on the said ratio laid down by the Hon'ble High Court of Karnataka, the CIT(A) has mis-referred to both decisions of Hon'ble High Court of Karnataka and Hon'ble High Court of Gujarat; but the CIT(A) has failed to take into consideration the settled law that where there is difference of opinion between different High Courts on an issue, then the one in favour of assessee needs to be followed as held by the Hon'ble Supreme Court in CIT Vs. M/s. Vegetable Products Ltd. (supra), in the absence of any decision rendered by the jurisdictional High Court. The Hon'ble Bombay

High Court in Rashmikant Kundalia Vs. Union of India (2015) 54 taxmann.com 200 (Bom) had decided the constitutional validity of provisions of section 234E of the Act and had held them to be ultra vires but had not decided the second issue of amendment brought to section 200A of the Act w.e.f. 01.06.2015. In view thereof, respectfully following the ratio laid down by the Hon'ble High Court of Karnataka and Pune Bench of Tribunal in series of cases, we delete the late filing fees charged under section 234E of the Act for the TDS returns for the period prior to 01.06.2015.

18. Further before parting, we may also refer to the order of CIT(A) in the case of Junagade Healthcare Pvt. Ltd., where the CIT(A) had dismissed appeals of assessee being delayed for period of December, 2013 and July, 2014. The CIT(A) while computing delay had taken the date of intimation under section 200A of the Act as the basis, whereas the assessee had filed appeals before CIT(A) against the order passed under section 154 of the Act. The CIT(A) had noted that rectification application was filed in February, 2018 which was rejected by CPC on the same day. The CIT(A) was of the view that there was no merit in condonation of delay, wherein appeals were filed beyond the period prescribed. The assessee had filed appeals against the order passed under section 154 of the Act, hence the time period of appeals filed by assessee before the CIT(A) have to be computed from the date of order passed under section 154 of the Act and not from the date of issue of intimation. Thus, there is no merit in the order of CIT(A) in dismissing the appeals of assessee on this issue.

19. We find similar issue has been decided by us in the case of Medical Superintendent Rural Hospital Vs. ACIT(CPC)-TDS (supra) and vide para 15, order dated 21.12.2017 it was held as under:-

> ***"15. Further, before parting, we may also refer to the order of the CIT(A) in these two appeals. The CIT(A) had dismissed the appeals of the assessee being delayed for a period of two and half years. The CIT(A) had taken the date of intimation under section 200A(3) dated 07-***

> ***08-2014 and computed the delay in filing the appeal late before him. However, the assessee had filed the appeal before the CIT(A) against the order passed under section 154 of the Act. The said application for rectification under section 154 was filed on 08-06-2017/09- 03-2017 in the respective years. The said application was decided by the Assessing Officer on 09-06-2017. The assessee filed an appeal against the dismissal of the rectification application filed under section 154 of the Act. The said fact is clear from the perusal of Form No.35 with special reference to Column 2(a) and 2(b). In the entirety of the above said facts and circumstances, we find no merit in the order of CIT(A) in the case of Medical Superintendent Rural Hospital, Surgana in dismissing the appeal inlimine being filed beyond the period of limitation. We have already decided the issue on merits in favour of assessee."***
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> ***20. We have already decided the issue on merits in favour of assessee. Accordingly, the grounds of appeal raised by assessee in all appeals are allowed."***

10. The Delhi Bench of Tribunal in Meghna Gupta vs ACIT (supra) has also laid down similar proposition and held as under:-

> ***6. "We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. At the outset, from the perusal of the rectification order u/s 200A generated by TDS (CPC), it is noticed that the TDS in 26QB mentions date of filing of 'challan cum statement' as 5.4.2014, wherein late filing of 'challan cum statement' u/s 234E has been levied. The assessee had purchased the property on 6.12.2013 i.e., relevant to the assessment year 2014-15. Since assessee had purchased the property from eight sellers and the payment to each of the seller has been made separately for an amount of Rs. 41,87,500/- aggregating to Rs. 3,35,00,000/-, the assessee' contention has been that it was not required to deduct TDS, because the payments made to each seller was less than the prescribed***

limit of Rs.50 lacs and therefore, provision of section 194IA was not applicable. The demand has been raised by the department u/s 200 in terms of failure to comply with Section 200A, which deals with the processing of statement of tax deducted at source u/s 200. First of all, sub section 3 of section 200 provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:-

> ***"(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"***

6.1. Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A(4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. As stated above, the assessee has duly deposited the tax not at the time of purchase albeit on 5.4.2014 and on the same date, statement has also been filed. The relevant provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015.

Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of Fatheraj Singhvi & Ors vs. Union of India reported in (2016) 289 CTR 0602, wherein the lordship had made following observations :-

> ***"14. We may now deal 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."***

7. Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled.

8. Similarly interest u/s 220(2) cannot be levied when fee u/s 234E itself is not leviable. In so far as charging of interest u/s 201(IA), the same cannot be charged as admittedly no order u/s 201(1) has been passed holding the assessee to be "assessee in default" and, therefore, such an interest is also deleted."

20. Now coming to the facts of the present case before us, the assessee, Udit Jain had deducted tax at source u/s

195 of the Act against purchase of property. The tax was deducted at 18.05.2015 and was even paid on 18.05.2015, though the return in Form No.27A was filed on 23.06.2016. We hold that since the period under consideration is first quarter of Financial Year 2015-16 i.e. prior to the amendment to section 200A(1) of the Act wherein clause (c) was inserted w.e.f. 01.06.2015 and since the assessee had already deposited the tax deducted at source, on the same day of deduction, there was reasonable cause in the hands of the assessee in not depositing the return in Form No.27A and the said default needs to be condoned. Even otherwise, following the ratio laid down in the decisions rendered to in the paras above, the Jurisdictional issue of exercise of power by the Assessing Officer in charging late filing fee u/s 234E of the Act, suffers from infirmity as clause (c) to section 200(A)(1) of the Act has been made applicable specifically from the date from 01.06.2015. Since the period of default was before the said date i.e. 01.06.2015, there is no merit in charging late filing fee u/s 234E of the Act. As we hold that no late filing fee is to be charged, then consequent interest charged u/s 220(2) of the Act also do not survive."

22. We find, the Delhi Bench of the Tribunal in the following decisions also have held that no 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 prior to 01.06.2015:-

- ***i) Prakash Industries Ltd. vs. DCIT, ITA Nos.5865 to 5869/Del/2016, order dated 29.07.2019;***
- ***ii) M/s Ajvin Infotech Pvt. Ltd. vs. DCIT, ITA No.2305 & 2306/Del/2017, order dated 04.03.2020;***
- ***iii) M/s D.D. Motors, Haryana vs. DCIT, ITA NO.956/Del/2017, order dated 18.10.2019; and***
- ***iv) District Health & Welfare Society vs. ITO, ITA No.7473/Del/2018, order dated 26.04.2019.***

23. So far as the various decisions relied on by Ld. DR are concerned, we have carefully gone through all those decisions and are of the opinion that these can be divided broadly into three categories i.e.

- ***a) Provisions of section 234 E are constitutionally valid***

b) Rule of consistency is not applicable and

c) Late of fee u/s. 234 E is leviable for defaults of period in filing the TDS/TCS statements/ returns even for the period prior to 01-06-2015

23.1 So far as the argument of the Ld. DR on the basis of various decisions including the decision of Hon'ble Delhi High Court in the case of Biswajit Das (supra) that provisions of section 234E are constitutionally valid is concerned, no doubt the provisions of section 234 E have been held to be constitutionally valid which is not the dispute before us. So far as the argument of Ld. DR on rule of consistency is concerned, the same in our opinion is not absolute but in the present case we are faced with a situation which has been considered by our coordinate benches and there is no subsequent development to depart there from. Moreover, our coordinate Benches have followed one approach in view of conflicting decision of different High Courts in the absence of any decision of the Jurisdictional High Court. So far as the levy of fee u/s. 234E for defaults of period in filing TDS/TCS statements / returns even for the period prior to 1.06.2015 is concerned, as mentioned earlier there are conflicting decisions by different High Courts and there is no decision on this issue by the jurisdictional High Court. While Hon'ble Karnataka High Court is in favour of the assessee holding that the amendments brought in statute w.e.f. 01.06.2015 are prospective in nature and hence notices issued u/s. 200 A of the Act for computation and intimation in payment of late filing fee u/s.234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable, the Hon'ble Gujarat High Court has decided the issue against the assessee and in favour of the revenue. After considering the above conflicting decisions, the coordinate benches of the Tribunal are taking the view that when there are conflicting decisions, the decision in favour of the assessee should be followed in the light of decision of Hon'ble Supreme Court in the case of Vegetables Products Limited (supra). In the light of the above discussion we hold that the CIT(A) is not justified in confirming the late fee levied by the AO u/s. 200 A r.w.s. 234 E since the defaults are prior to 1.06.2015. Accordingly we set aside the order of the Ld. CIT(A) and the fee levied u/s. 234 E and interest there on u/s. 220 (2) is directed to be deleted."

10. In view of what has been discussed in the preceding paras and following the aforesaid order passed by the coordinate Bench of the Tribunal, we are of the considered view that no doubt

provisions contained u/s 234E under which late fee has been levied for defaults of period in filing the TDS/TCS statements/returns are held to be valid but coordinate Benches of the Tribunal have followed one approach, though there are conflicting decisions of different High Courts.

11. Because **Hon'ble Karnataka High Court in case of Fatehraj Singhvi & Ors. vs. UOI & Ors. 2016 (9) TMI 964 (Karnataka High Court)** is in favour of the assessee holding that the amendments brought in statute w.e.f. 01.06.2015 are prospective in nature and as such, notices issued u/s 200A of the Act for computation and intimation of payment of late filing fee u/s 234E of the Act relating to the period of tax deduction prior to 01.06.2015 was not maintainable.

12. At the same time, Hon'ble **Gujarat High Court in case of Rajesh Kourani vs. UOI (2017) 83 taxmann.com 137 (Gujarat)** has decided the issue against the assessee. So, in these circumstances, we are of the considered view that following the decision rendered by **Hon'ble Supreme Court in the case of Vegetable products Limited 88 ITR 192 (SC) that** when there are conflicting decisions, the view taken in favour of the assessee should be followed, the impugned order passed by the ld. CIT (A) confirming the late fee levied by the AO u/s 200A read with

section 234E as the defaults are prior to 01.06.2015, is not sustainable in the eyes of law, hence fee levied u/s 234E is ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 26TH day of July, 2021.

SD/-	**SD/-**
(ANIL CHATURVEDI)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 26TH day of July, 2021
Binita

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.