

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE
BEFORE SHRI. B.R BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.2200 to 2202/Bang/2019
Assessment Year : 2013-14 to 2015-16

M/s Transpose Solutions (India), No.22, 2 nd Floor, Central Street, 5 th Block, Kumara Park West, Bengaluru-560 020.	Vs.	The Addl. Commissioner of Income-Tax, CPC, TDS, Bengaluru.
PAN - AADCT 7981 K		
APPELLANT		RESPONDENT

Assessee by	:	Smt. Preethi Patel, Advocate
Revenue by	:	Shri Kannan Narayanan, JCIT (DR)

Date of Hearing	:	15-02-2021
Date of Pronouncement	:	08-03-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals has been filed by assessee against common order dated 25/07/2019 passed by Ld.CIT(A)-9, Bangalore for assessment years 2013-14 to 2015-16. The issue

that arises out of the present appeal is challenging the late fee levied under section 234E of the Act, for delay in furnishing the tax deducted at source statement.

2. The Ld.AR submitted that there was various issues that assessee had to face thereby causing financial distress. Assessee therefore delayed in clearing the dues. It was submitted that assessee was not having sufficient income to sustain its business during the relevant period due to cash crisis. It has been submitted that section 200A was amended incorporating levy of fee under section 234E in clause (c) read with section 200 A (1) of the Act vide Finance Act No.2, 2015 ,w.e.f. 01/06/2015. It was submitted that, the relevant assessment years are prior to the date of amendment in section 234E of the Act read with section 200A(1) is not applicable.

3. On the contrary the Ld.Sr.DR submitted that assessee has made the TDS payments after the date of insertion of the relevant provision in the statute and therefore supported the orders passed by authorities below.

4. We have perused submissions advanced by both sides in light of records placed before us.

5. Admittedly, the levy of late fees under section 234E has been exercised under section 200A for period prior to 01/06/2015. We note that the amendment to section 200A of the Act came into effect from 01/06/2015 and is held to be prospective in nature and therefore no computation of fee for the demand or intimation for fee under section 234 E could be made

for late deposit of TDS for the assessment years prior to 01/06/2015. This view is supported by the decision of *Hon'ble Karnataka High Court* in case of *Fatheraj Singhvi & Ors vs UOI* reported in (2016) 142 DTR Judgements 281. *Hon'ble court* held as under:

"23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent-authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.

25. As such, as recorded earlier, it is on account of the intimation received under Section 200A for making computation and demand of fees under Section 234E, the same has necessitated the appellant to challenge the constitutional validity of Section 234E. When the intimation of the demand notices under Section

200A is held to be without authority of law so far as it relates to computation and demand of fee under Section 234E, we find that the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise because there would not be any cause on the part of the petitioners to continue to maintain the challenge to constitutional validity under Section 234E of the Act. At this stage, we may also record that the learned counsels appearing for the appellant had also declared that if the impugned notices under Section 200A are set aside, so far as it relates to computation and intimation for payment of fee under Section 234E, the appellant-petitioners would not

press the challenge to the constitutional validity of Section 234E of the Act. But, they submitted that the question of constitutional validity of Section 234E may be kept open to be considered by the Division Bench and the Judgment of the learned Single Judge may not conclude the constitutional validity of Section 234E of the Act.

26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1. 6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.

28. The appeals are partly allowed to the aforesaid extent. Considering the facts and circumstances, no order as to costs".

6. Respectfully following the same, we are of the opinion that, late fee under section 234B cannot be levied for a period up to 01/06/2015. In the present years under consideration, interest u/s 234B is not leviable for asst. year 2013-14 & 2014-15. However for asst. year 2015-16 the amended provisions would be applicable. In respect of asst. year 2015-16, no interest would be chargeable for the first quarter.

We therefore direct Ld.AO to delete the addition made under section 234B of the Act in the hands of assessee for the relevant assessment years under consideration.

Accordingly grounds raised by assessee stands allowed for assessment years 2013-14 & 2014-15 and asst. year 2015-16 stands party allowed.

In the result appeal filed by assessee stands allowed for all years under consideration.

Order pronounced in the open court on 8th March, 2021

Sd/-
(B.R BASKARAN)
Accountant Member
Bangalore,
Dated, the 8th March, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-3-2021		Sr.PS
3.	Draft proposed & placed before the second member	-3-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-3-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-3-2021		Sr.PS/PS
6.	Kept for pronouncement on	-3-2021		Sr.PS
7.	Date of uploading the order on Website	-3-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-3-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS