

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-A, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 764/JP/2017  
निर्धारण वर्ष /Assessment Year :2015-16 (26Q, 4th Qtr)

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|---|-------------|--------------------------------------|
| Shri Uttam Chand Gangwal<br>M/s Adinath Stones, Lohagal Road,<br>New Kayasth Colony, Ajmer. | बनाम<br>Vs. | The ACIT,<br>CPC (TDS),<br>Ghaziabad |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: JDHUO1113A  |             |                                      |
| अपीलार्थी /Appellant  |             | प्रत्यर्थी /Respondent               |

निर्धारिती की ओर से / Assessee by : Shri Devang Gargieya (Adv.)  
राजस्व की ओर से / Revenue by : Shri J. C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/01/2019  
उदघोषणा की तारीख /Date of Pronouncement: 23/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal against the order of Id. CIT(A), Ajmer dated 13.07.2017 wherein the assessee has taken the following grounds of appeal:-

- "1. The impugned order passed u/s 200A of the Act dated 30.07.2015 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be quashed.*
- 2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the impugned order passed by the AO u/s 200A of the Act dated 30.07.2015 by imposing the late fees of Rs. 13,600/- u/s 234E of the Act. The impugned order so passed and late fees so levied being totally contrary to the provisions of law and facts kindly be quashed."*

2. Briefly stated, the facts of the case are that the assessee filed his TDS return in Form No. 26Q for the quarter ended 31<sup>st</sup> March, 2015 on 22<sup>nd</sup> July,

2015 for which the due date was 15<sup>th</sup> May, 2015. The TDS return was processed and the ACIT, TDS issued an intimation dated 30<sup>th</sup> July, 2015 u/s 200A of the Act imposing a penalty of Rs. 13,600/- u/s 234E of the Act for the delay in filing the TDS return.

3. On appeal, the Id. CIT(A) has confirmed the said levy and his findings are as under:-

*"I have gone through the order, statement of facts, grounds of appeal and written submissions carefully. It is seen that from the intimation issued u/s 200A that the TDS statement for the 4<sup>th</sup> quarter of the F.Y 2014-15 was processed on 30.07.2015. With effect from 01.06.2015, adjustments in respect of the fee paid u/s 234E can be made under clause (c) of Sub-section 1 of section 200A. As the TDS return of the appellant has become has been processed on 30.07.2015, 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."*

4. During the course of hearing, the Id. AR submitted prior to amendment in section 200A of the Act w.e.f 01.06.2015, the Assessing Officer had no authority to levy fee for the period in respect of return pertaining to the period prior to 01.06.2015. It was further submitted that the matter is squarely covered by the decision of this Bench in case of Gita Star Hotels & Resorts Private Ltd., Jaipur vs. DCIT, CPC, TDS, Ghaziabad (in ITA No. 14/JP/2017 dated 29.10.2018). It was accordingly submitted that there is no basis with the Assessing Officer to levy the penalty u/s 234E of the Act and the same may kindly deleted.

5. Per contra, the Id. DR submitted that the assessee has filed the quarterly return on 22<sup>nd</sup> July, 2015 which is well after amendment to the provisions in section 200A w.e.f 01.06.2015 and thereafter an intimation has been issued on 30<sup>th</sup> July, 2015 u/s 200A of the Act imposing the penalty u/s 234E of the Act. It was accordingly submitted that there is no infirmity in the order of the Id. CIT(A) in confirming the said levy of the penalty and accordingly, the order of the Id. CIT(A) should be confirmed.

6. In Gita Star Hotels & Resorts P Ltd. (supra), we have examined this matter at length and it would be useful to refer to the findings which are reproduced at para 8 as under:-

*"8. We have heard the rival contentions and perused the material available on record. In the present case, the undisputed facts are that the assessee filed its TDS return (Form 26Q) for the fourth quarter of financial year 2012-13 on 26.12.2012 and the same was processed and intimation under section 200A was issued vide order dated 15.12.2013 much prior to the amendment to section 200A of the Act w.e.f. 1.6.2015 empowering the Assessing officer levying the fees under section 234E of the Act. It is therefore not a case of continuing default where the assessee has defaulted in furnishing the TDS statement even after 1.6.2015 and thereafter, the demand for payment of fees under section 234E has been raised by the Assessing officer. In case of Fatheraj Singhvi (supra), the Hon'ble Karnataka High Court has held that the provisions of amended section 200A are prospective in nature. Further, the decision of the Hon'ble Rajasthan High Court in case of M/s. Dundlod Shikshan Sansthan and Others (supra) as relied by Id. CIT (A) is in the context of validity of section 234E, but not in the context of power of AO for levy of fee under section 234E prior to 1.6.2015. In view of the above, the Assessing Officer while processing the TDS statements for the*

*period prior to 01.06.2015, was not empowered to charge fees under section 234E of the Act. Hence, the demand raised by way of charging the fees under section 234E of the Act is not valid and the same is deleted.”*

7. In the aforesaid decision, the TDS return (Form 26Q) for the fourth quarter of financial year 2012-13 was filed by the assessee on 26.12.2012 and the same was processed and intimation under section 200A was issued on 15.12.2013 much prior to the amendment to section 200A of the Act w.e.f. 1.6.2015 empowering the Assessing officer levying the fees under section 234E of the Act. In that factual background, it was held that it was not a case of continuing default where the assessee has defaulted in furnishing the TDS statement even after 1.6.2015 and therefore, the demand for payment of fees under section 234E was deleted. The said decision therefore doesn't support the case of the assessee.

8. In the instant case, the assessee filed its TDS return in Form No. 26Q for the quarter ended 31<sup>st</sup> March, 2015 on 22<sup>nd</sup> July, 2015 and the same was processed and an intimation dated 30 July, 2015 was issued by the AO u/s 200A of the Act. Thus, both the filing of the return of income by the assessee and processing thereof has happened much after 1.6.2015 i.e, the date of assumption of jurisdiction by the AO u/s 200A(1)(C) to levy fees under section 234E of the Act. Even though the quarterly return pertains to quarter ended 31.3.2015, the fact remains that there is a continuing default even after 1.6.2015 and the return was actually filed on 22.07.2015. The said provisions cannot be read to say that where an assessee file his return of income for the period falling after 1.6.2015 and there is a delay on his part to file the return in time, he will suffer the levy of fees, however, an assessee who has delayed the filing of the return of income even pertaining to the period prior to 1.06.2015, he can be absolved from such levy even though there is a continuous default

on his part even after 1.6.2015. In our view, the AO has acquired the jurisdiction to levy the fees as on 1.06.2015 and therefore, any return filed and processed after 1.6.2015 will fall within his jurisdiction where on occurrence of any default on part of the assessee, he can levy fee so mandated u/s 234E of the Act. Therefore, irrespective of the period to which the quarterly return pertains, where the return is filed after 1.6.2015, the AO can levy fee under section 234E of the Act. At the same time, in terms of determining the period for which fees can be levied, only saving could be that for the period of delay falling prior to 1.06.2015, there could not be any levy of fees as the assumption of jurisdiction to levy such fees have been held by the Courts to be prospective in nature. However, where the delay continues beyond 1.06.2015, the AO is well within his jurisdiction to levy fees under section 234E for the period starting 1.06.2015 to the date of actual filing of the TDS return. In light of the same, in the instant case, the levy of fees under section 234E is upheld for the period 1.06.2015 to the date of actual filing of the TDS return which is 22.07.2015 and the balance fee so levied is hereby deleted. In the result, the ground of appeal is partly allowed.

In the result, appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 23/01/2019.

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23/01/2019

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Uttam Chand Gangwal, 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. 764/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

