In the Income-Tax Appellate Tribunal,
Agra Bench, Agra

Before :   Shri Anil Chaturvedi, Accountant Member And
Sh. Laliet Kumar, Judicial Member

ITA No.128 to 135/Agr/2021
Assessment year: 2012-13 & 2013-14

Garrison Engineer (E/M) Air Force Station Maharajpur Gwalior M.P. PAN: BPLGO2895E	vs.	JCIT (TDS), Gwalior M.P.
(Appellant)		**(Respondent)**

Appellant by	Ashok Vijaya Wargiya, C.A.
Respondent by	Sh. Waseem Arshad, Sr. D.R.
Date of Hearing	22.03.2022
Date OF Order	22.03.2022

Per Bench:-

This bunch of appeals is directed against the order of ld. CIT(A),against upholding levy of fee u/s 234E of the Income Tax Act, 1961(hereinafter short the 'Act').

2.   Since, there is a common issue being involved in all these appeals, hence they are being disposed of by this consolidated order for the sake of convenience and brevity. We have heard the Ld. Counsel of both side i.e. Assessee and Revenue for all the cases.

3.   The common issue involved in these appeals is that the AO imposed late fees u/s 234E of the Act., where the enabling clause (c) was inserted in the section 200A w.e.f. 01.06.2015. Which has been confirmed by the Ld. CIT(A) relying on the of Hon'ble Gujarat High Court in the case of 'Rajesh Kaurani vs. Union of India', 83 Taxmann.com 137(Guj).

4.   Having heard both the parties and considering the facts of all these appeals as to whether late filing fee u/s 234E of the Act has rightly been charged in the intimation issued u/s 200A/206CB of the Act whileprocessing the TDS

returns/statements as the enabling clause (c) having been inserted in the section w.e.f. 01.06.2015. We understand that earlier, there was no enabling provision in the Act u/s 200A for raising demand in respect of levy of fee u/s 234E. As such, as per the assessee, in respect of TDS statement filed for a period up to 31.03.2015, no late fee could be levied in the intimation issued u/s 200A of the Act. The details of the TDS deduction and statement filed by the assessee are on record and the same had not been disputed by the revenue is reproduced hereunder:

5.   On similar facts, the same issue has been adjudicated by the Co-ordinated bench ITAT Agra,in the case of 'Sudershan Goyal vs. DCIT (TDS)' in ITA No. 442/Agra/2017 vide order dtd. 09.04.2018. The relevant part of the order is reproduced as follows:

> "3.   Heard. The ld. CIT(A), while deciding the matter against the assessee, has placed reliance on 'Rajesh Kaurani vs. UOI', 83 Taxmann.com 137 (Guj), wherein, it has been held that section 200A of the Act is a machinery provision providing the mechanism for processing a statement of deduction of tax at source and for making adjustments. The ld. CIT(A) has held that this decision was delivered after considering numerous ITAT/High Court decisions and so, this decision in 'Rajesh Kaurani' (supra) holds the field.
> 4.   We do not find the view taken by the ld. CIT(A) to be correct in law. As against 'Rajesh Kaurani' (supra), 'Shri Fatehraj Singhvi and Others vs.UOI', 73 Taxmann.com 252 (Ker), as also admitted by the ld. CIT(A) himself, decides the issue in favour of the assessee. The only objection of the ld. CIT(A) is that this decision and others to the same effect have been taken into consideration by the Hon'ble Gujarat High Court while passing 'Rajesh Kaurani' (supra). However, while observing so, the ld. CIT(A) has failed to take into consideration the settled law that where there is a cleavage of opinion between different High Courts on an issue, the one in favour of the assessee needs to be followed. It has so been held by the Hon'ble Supreme Court in 'CIT vs. Vegetable Products Ltd.', 88 ITR 192 (SC). It is also not a case where the decision against the assessee has been rendered by the Jurisdictional High Court qua the assessee.
> 5.   In 'Shri 'FatehrajSinghvi and Others' (supra) it has been held, inter alia, as follows:
> "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."

6.   In view of the above, respectfully following 'Shri FatehrajSinghvi and Others' (supra), 'Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS)', order dated 09.06.2015 passed in ITA No.90/ASR/2015, for A.Y.2013-14, by the Amritsar Bench of the Tribunal, and 'Shri Kaur Chand Jain vs. DCIT, CPC (TDS) Ghaziabad', order dated 15.09.2016, in ITA No.378/ASR/2015, for A.Y. 2012-13, the grievance of the assessee is accepted as justified. The order under appeal is reversed. The levy of the fee is cancelled."

6.   In the above view, respectfully following 'Shri FatehrajSinghvi and Ors' (Supra), and our own finding in the case of 'Sudershan Goyal' (Supra), we accept the grievance of the assessees as genuine. Accordingly, the orders of the CIT(A) are reversed and the fee so levied under section 234E of the Act is cancelled.

7.   In the result, all the appeals are allowed.

(Order pronounced in the open Court on 22/03/2022)

           Sd/-   **Sd/-**
   (Laliet Kumar)   **(Anil Chaturvedi)**
Judicial member   **Accountant Member**
Dated: 22nd March, 2022
docs

Copy of order forwarded to:
(1)   The appellant   *(2)   The respondent*
(3)   Commissioner   *(4)   CIT(A)*
(5)   Departmental Representative   *(6)   Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Agra Bench, Agra