

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. No. 47/Asr/2022
Assessment Year: 2020-21

Reshma Devi Prop. M/s Kissan Bricks Co., Vill. Ghuman Kalan, Maur Bathinda [PAN: AFGPD 0377Q] (Appellant)	Vs.	CPC (TDS) Ghaziabad (Respondent)
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Appellant by : None
Respondent by : Sh. Rajiv Wadhera, Sr. DR

Date of Hearing: 10.11.2022
Date of Pronouncement: 17.11.2022

ORDER

Per Dr. M. L. Meena, AM:

The present appeal has been filed by the assessee against the order dated 27.12.2021 passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi in respect of Assessment Year 2020-21.

2. The assessee has raised the following grounds of appeal:

- “1. (a) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) has erred in law and on facts by confirming the late fee charged under section 234E whereas as per explanation furnished and material placed on record, late fees is not chargeable. (b) 2. Without prejudice to the above, the Id. Commissioner of Income Tax (Appeals) has erred in law and on facts by confirming the late fees levied u/s 234E of the Act amounting to Rs.30,600/- without properly adjudicating ground no. 3, reproduced as under:-

“Without prejudice, that the TDS(CPC) has erred on facts and law by levying the late filing fees under section 234E of the Act whereas as per facts and circumstances of the case the time limit defined under rule 31A read with section 200(3) of the Act. As such late filing fee levied is invalid and uncalled for. Therefore, the same be deleted.”

2. *That the appellant craves to add, amend ground of appeals.”*
3. *That the appellant craves leave to add, alter, amend or delete any of the grounds of appeal at the time of hearing and all above grounds are without prejudice to each other.”*

3. The sole issue involved in this appeal is regarding charging of late fee u/s 234E of the Act amounting to Rs. 30,600/-.

4. In the present case, the Id. counsel for the assessee had filed 1st adjournment application dated 23.09.2020 stating therein that due to heavy rush for filing of income tax return, the requisite information could not be collected and prepared. Considering the request of the Id. AR, the case was adjourned to 10.11.2022. Again the Id. AR has filed adjournment application, by repeating a similar reason. However, considering a technical issue of levy of penalty u/s 234E charged by the AO and confirmed by the

ld. CIT(A) under the mandatory provisions of law, we had rejected the Ld. AR request for adjournment and decided to proceed dispose of the appeal after hearing the DR.

5. The Ld. CIT (A) has confirmed levy of penalty u/s 234E charged by the AO, by observing as follows:

“3.0 Hearing notice was mailed by this office on 03-12-2021 requesting the appellant to file written submissions and documents electronically through incometaxindia.efiling website on or before 15-12-2021 for necessary consideration while disposing this appeal. The appellant mailed written submissions on 15-12-2021 wherein it has been submitted that she was under the bonafide belief that time limits have been extended till December 31st, 2020 by the Taxation and other laws (Relaxation of Certain Provisions) 2020 in time of COVID 19 Pandemic which is in accordance wherein several timelines mentioned in IT Act has been extended till 31st December 2020. Secondly, it was contended that she had voluntarily deducted tax u/s 194A on interest payments though her gross receipts were less than 1 crores in the immediately preceding year i.e FY 2018-19 and therefore she should not be considered as a person responsible for deduction of tax under Chapter-XVIIIB as envisaged in Rule-31 A. Therefore, according to her, time limits for filing of TDS statements do not apply and consequently late filing fee u/s 234E is not attracted in her case. With these submissions, the appellant pleaded for deletion of late fee levied u/s 234E.

4.0 The above submissions of the appellant have been duly considered. In so far as levy of late filing fee u/s 234E, as per the provisions of the Act, there is no mandate to look into and consider whether there was a reasonable cause for the delay in filing of TDS quarterly statements. The words 'shall be liable to pay, by way of fee, used in sec 234E make it clear

that the levy of this fees is mandatory if the person fails to deliver the statement within the time prescribed u/s 200(3). So appellant's plea for deletion of this penalty on a reasonable cause of being under a bonafide belief about extension of time limits upto 31st Dec 2020 cannot be accepted. In fact, by Board's Notification in 35/2020 dated 24-06-2020, the time limit for filing of 4th quarter TDS statements was extended only upto 31-07-2020 in view of COVID situation. The CPC(TDS) had levied this fees for the delay beyond 31-07- 2020 only. The other argument that she is not a person responsible for deduction of tax is also not acceptable. As per the provisions of sec 200(3), any person deducting tax in accordance with provisions of Chapter-XVII, shall after paying the tax deducted to the credit of the Central Government, submit the TDS statement within prescribed time. So, the appellant having deducted the tax has the obligation to file the quarterly TDS statements within the prescribed time limit which she failed to fulfill by filing the such statement with some delay. Therefore, CPC(TDS) was justified in levying late fee u/s 234E amounting to Rs 30,600/-. The grounds are accordingly dismissed."

6. The appellant assessee alleged that the Commissioner of Income Tax (Appeals) has erred in law and on facts by confirming the late fee charged under section 234E whereas as per explanation furnished and material placed on record, late fees is not chargeable; that without prejudice to the above, the Id. Commissioner of Income Tax (Appeals) has erred in law and on facts by confirming the late fees levied u/s 234E of the Act amounting to Rs.30,600/- without properly adjudicating the issue on facts and law regarding levying the late filing fees under section 234E of

the Act whereas as per facts and circumstances of the case the time limit defined under rule 31A read with section 200(3) of the Act. He requested that such late filing fee levied is invalid and uncalled for. Therefore, the same be deleted.

7. The Ld. DR stands by the impugned order and explained that the Id. CIT (A) has passed a well -reasoned order with analysis of facts.

8. After hearing the Ld. DR, perusal of records and the impugned order, it is noted that by Board's Notification in 35/2020 dated 24-06-2020, the time limit for filing of 4th quarter TDS statements was extended only upto 31-07-2020 in view of COVID situation. Admittedly, it is not disputed that the CPC(TDS) had levied this fees for the delay beyond 31-07- 2020 only. The Ld CIT(A) has been justified in not accepting the argument that she was not a person responsible for deduction of tax. As per the provisions of sec 200(3), any person deducting tax in accordance with provisions of Chapter-XVII, shall after paying the tax deducted to the credit of the Central Government, required to submit the TDS statement within prescribed time. Thus, the appellant having deducted the tax has the obligation to file the quarterly TDS statements within the prescribed time limit which she failed to fulfill by filing the such statement with some delay as above. Therefore, the Ld. CIT(A) was justified in confirming the finding

of the CPC(TDS) in levying late fee u/s 234E amounting to Rs 30,600/- as per law.

9. Accordingly, we find no merit and substance, the grounds of the appellant are rejected.

10. In result, the assessee's appeal is dismissed.

Order pronounced in the open court on 17.11.2022

Sd/-
(Anikesh Banerjee)
Judicial Member



Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr/PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT(Appeals)
- (4) The CIT concerned
- (5) The Sr. DR, I.T.A.T

True Copy
By Order