

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1410/Del/2022
(ASSESSMENT YEAR 2014-15)**

Abhishek Malhotra C-2/39, Safdarjung Development Area New Delhi-110 016 PAN-AHQPM 0336C (Appellant)	Vs.	ITO Ward-73(1) Room No. 401, Aayakar Bhawan, District Centre, Laxmi Nagar, Delhi (Respondent)
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Appellant by	Mr. S. Krishnan, Advocate
Respondent by	Mr. Kanv Bali, Sr. DR

Date of Hearing	19/07/2023
Date of Pronouncement	21/07/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A", for short], dated 24/12/2021 for Assessment Year 2014-15.

"1. The Learned Commissioner of Income Tax (Appeals) dismissed the appeal filed by the assessee, against the order passed under section 154 by the Income Tax Officer towards late fees charged under section 234E of Rs.652690 by the CPC for the various quarterly TDS return filed for the

period prior to 01/06/2015, spanning over two different financial years 2013-14 and 2014-15, on the grounds that "the appellant has filed a single appeal for several intimations pertaining to three different financial years on the basis of a letter issued by the ITO in response to a rectification petition addressed to an authority which was not the competent authority to rectify the intimation", without appreciating the fact that only one appeal can be filed against a single rectification order.

2. The Learned Commissioner of Income Tax (Appeals) dismissed the appeal filed by the assessee, against the order passed under section 154 by the Income Tax Officer towards late fees charged under section 234E of Rs.652690- by the CPC for the various quarterly TDS return filed for the period prior to 01/06/2015, spanning over two different financial years 2013-14 and 2014-15, on the grounds that "the appellant has filed a single appeal for several intimations pertaining to three different financial years on the basis of a letter issued by the ITO in response to a rectification petition addressed to an authority which was not the competent authority to rectify the limitation", without appreciating the fact that the written order passed 154(4) by the 14 Income Tax Officer giving reference to the assessee's rectification request is not a mere letter.

3 The Learned Commissioner of Income Tax (Appeals) dismissed the appeal filed by the assessee, against the order passed under section 154 by the Income Tax Officer towards late fees charged under section 2141 of Rs.652690- by the CPC for the various quarterly TDS return filed for the period prior to 01/06/2015, spanning over two different financial years 2013-14 and 2014-15, on the grounds that "the appellant has filed a single appeal for several intonations pertaining to three different financial wars on the basis of a letter issued by the ITO in response to a rectification petition addressed to an authority which was not the competent authority to rectify the intimation", without appreciating the fact that the Ld Income Tax Officer had the Jurisdiction to pass the Rectification Order and had merely clarified that cancellation of demand u/s 234E was not in his purview.

4. The Learned Income Tax Officer has not allowed the rectification filed under section 154 against late fees charged under section 234E of Rs.652690/- by the CPC for the TDS return filed for the period prior to 01/06/2015 on the ground that the same does not come under the purview of the Learned Income Tax Officer. Section 200A(1)(c) enabling the Assessing Officer to determine the fee under section 234E was brought into effect from 01-06-2015 and was held to be prospective. Hence, no computation of fee for demand or intimation for fee under section 234E could be made for TDS deducted for respective years / periods prior to 01/06/2015. Accordingly, the assessee is not liable to pay fees u/s 234E

of Rs.6,52,690/- toward late filing of TDS for financial years 2013-14 and 2014-15.

5. To condone the delay in filing the appeal, if any.

6. Any other ground with permission.”

2. There is a delay of 112 days in filing the present appeal, the assessee filed an application for condonation of delay contending that the delay deserves to be condoned, in view of order of the Hon'ble Supreme Court dated 10/01/2022 made in suo-moto writ petition (C) No. 3 of 2022 (In re:-cognizance for extension of limitation). Considering the Covid situations, lockdown in the country and after calculating the days of delay in compliance of the order of the Hon'ble Supreme Court, it is submitted by the Ld. AR that only 14 days delay in filing the present Appeal. It is further contended that during the said period, the assessee was unwell and could attend the office and file the Appeal in time, therefore, prayed for condoning the delay in filing the Appeal. Considering the reasons assigned in the application for condonation of delay, the delay in filing the present appeal is condoned.

3. Brief facts of the case are that, the assessee is a practicing advocate and filed TDS returns belatedly for various quarters in Financial Year 2013-14 & 2014-15. The CPC, Bangalore, issued intimations charging late fee u/s 234-E of the Act for each quarter. The assessee filed a common rectification application on 06/06/2019 before the ITO (A.O) pointing out that no demand u/s 234E could have been raised in the said manner prior to 01/06/2015. The said application for rectification filed by the assessee has been dismissed on the ground that the power of rectification is not coming under the purview of the A.O. Aggrieved by the dismissal of the rectification application, the assessee filed an appeal before the CIT(A). The CIT(A) vide order dated 24/12/2021, without deciding the Appeal on merit, dismissed the Appeal filed by the assessee on the ground that each intimation u/s 200-A passed by the CPC, had a separate cause of action, therefore, the assessee cannot maintain a single appeal for several intimations pertaining to three different Financial Years. Further pointed out that the assessee should have filed correction statement before CPC, Bangalore instead of filing application u/s 154 before the A.O.

Aggrieved by the order of the CIT(A) dated 24/12/2021 the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee taken us through the provisions of Section 154 of the Act and submitted that the power of rectification is available to every authority mentioned u/s 116 of the Act which specifically includes the Assessee's jurisdictional A.O. and further submitted that as against one intimation of the A.O. declining interference, the assessee was required to file only one appeal in terms of Section 246 of the Act and further on the merit submitted that Section 234E was introduced w.e.f. 01/06/2015 and charge of late fee under said provision was clearly a mistake apparent from record, therefore submitted that the CIT(A) committed error in dismissing the appeal of the assessee.

5. Per contra, the Ld. Departmental Representative submitted that as against the several intimations issued u/s 200A of the Act by the CPC, the Assessee had separate cause of action, therefore, the CIT(A) is right in dismissing the single appeal of the assessee.

Further the assessee should have filed correction statement before CPC, Bangalore instead of filing application u/s 154 before the A.O. Therefore, justified the orders of the Lower Authorities.

6. We have heard both the parties and perused the material available on record. The assessee filed TDS returns belatedly for the various quarters in the Financial Year 2013-14 and 2014-15 and the CPC, Bangalore, issued intimations charging late fee u/s 234E of the Act for each quarters, but the assessee filed single rectification application vide letter dated 06/06/2019 contending that no demand u/s 234E could have been issued prior to 01/06/2015. In our opinion, since the intimations have been issued separately for each quarters, the assessee should have filed the separate applications for rectifying each intimations.

7. Further, it is found that the said rectification application dated 06/06/2019 has been declined to be entertained by the A.O. on the ground that the said action did not come within his purview of the A.O. For the sake of adjudicating the said issue it is

inevitable to examine the provisions of Section 154 of the Act which reads as follows:-

“Rectification of mistake.

¹¹154. ¹²[(1) With a view to rectifying any mistake apparent from the record¹³ an income-tax authority referred to in section 116 may,—

(a) amend any order passed by it under the provisions of this Act ;

¹⁴[(b) amend any intimation or deemed intimation under sub-section (1) of section 143;]

¹⁵[(c) amend any intimation under sub-section (1) of section 200A.]

¹⁶[(1A) Where any matter¹⁷ has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.]

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee ¹⁸[or by the deductor], and where the authority concerned is the ¹⁹[***] ²⁰[Commissioner (Appeals)], by the ²¹[Assessing] Officer also.

²²[* * *]

(3) An amendment, which has the effect of enhancing an assessment¹⁷ or reducing a refund or otherwise increasing the liability of the assessee ¹⁸[or the deductor], shall not be made under this section unless the authority concerned has given notice to the assessee ¹⁸[or the deductor] of its intention so to do and has allowed the assessee ¹⁸[or the deductor] a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the income-tax authority concerned.

²³[(5) Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor, the Assessing Officer shall make any refund which may be due to such assessee or the deductor.]

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund ²⁴[already made or otherwise increasing the liability of the assessee or the deductor, the Assessing Officer shall serve on the assessee or the deductor, as the case may be] a notice of demand in the prescribed form specifying the sum payable²⁵, and such notice of demand shall be deemed to be issued under section 156 and the provisions of this Act shall apply accordingly.

(7) Save as otherwise provided in section 155 or sub-section (4) of section 186²⁶ no amendment under this section shall be made after the expiry of four years ²⁷[from the end of the financial year in which the order²⁸ sought to be amended was passed.]

²⁹[(8) Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee ³⁰[or by the deductor] on or after the 1st day of June, 2001 to an income-tax authority referred to in sub-section (1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it,—

- (a) making the amendment; or
- (b) refusing to allow the claim.]

Further Section 116 of the Act reads as under:-

“Income-tax authorities.

116. ¹ Income- tax authorities There shall be the following classes of income- tax authorities for the purposes of this Act, namely:-

(a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 19632 (54 of 1963),

(b) Directors- General of Income- tax or Chief Commissioners of Income- tax,

(c) Directors of Income- tax or, Commissioners of Income- tax or Commissioners of Income- tax (Appeals),

(cc) ³ Additional Directors of Income- tax or Additional Commissioners of Income- tax or Additional Commissioners of income- tax (Appeals),]

(d) Deputy Directors of Income- tax or Deputy Commissioners of Income- tax or Deputy Commissioners of Income- tax (Appeals),

(e) Assistant Directors of Income- tax or Assistant Commissioners of Income- tax,

(f) Income- tax Officers,

(g) Tax Recovery Officers,

(h) Inspectors of Income- tax.”

8. A combined reading of provisions of Section 154 and the Section 116 of the Act, which specifically includes the Assessee's jurisdictional A.O. for the sake of Section 154 which provides for rectification of mistake. Thus, in our opinion, the Jurisdictional A.O. is having the jurisdiction to entertain the application filed by the Assessee u/s 154 of the Act. Considering the fact that the assessee had filed single rectification application before the A.O. as

against several intimations, we direct the Assessee to file separate rectification applications against each intimation and further we direct the A.O. to dispose off the applications on merit, without raising the issue of jurisdiction. Accordingly, the grounds of Appeal of the Assessee are disposed off and the Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 21st July, 2023

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated: 21/07/2023
Pk/R.N, Sr. ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

