

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "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 Nos. 891, 892, 893, 894, 895 & 896/JP/2019
Financial Years :2015-16 & 2016-17 (24Q & 26Q, 2nd, 3rd & 4th Quarter)

Block Development Officer, Chaksu, Principal Officer, Panchayat Samiti, Tonk Road, Chaksu, Jaipur, Rajasthan-303901.	बनाम Vs.	A.C.I.T., CPC-TDS, Gaziabad.
TAN No.: JDHB02784F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Yogesh Sharma (CA)
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing: 15/06/2020
उदघोषणा की तारीख / Date of Pronouncement : 19/06/2020

आदेश / ORDER

PER: BENCH

These six appeals by the assessee are directed against the six separate orders all dated 04/04/2019 of Id. CIT(A)-3, Jaipur for the Financial Years :2015-16 & 2016-17 (24Q & 26Q, 2nd, 3rd & 4th Quarter) arising from the order U/s 154 of the Income Tax Act, 1961 (in short, the Act) whereby the A.O. has made adjustment on account of fee leviable U/s 234E of the Act while issuing the intimation U/s 200A of the Act for the F.Y. 2015-16 and 2016-17 respectively. The assessee has

raised common grounds in these appeals. The grounds raised in ITA No. 891/JP/2019 are reproduced as under:

- “1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the levy of penalty U/S 234E/154. He has not only failed to consider and appreciate the explanation given by the appellant in respect of the bonafide explanation on the ground of sufficient reason/genuine cause with proper documents and evidence in respect of the section 234E but has solely limited his order to the findings of appeal whereas we have Submitted before the Ld. CIT-(Appeals)-III. That during the considering quarter, the report of TDS was submitted by us for salary of the government employees, all the taxes was paid timely but the TDS return was filed late due to some reasonable, unavoidable and sufficient causes for failure like limited staff and implementation of government project such as NAREGA, SWACHH BHARAT MISSION, PMGY etc. which is necessary in the interest of public. Hence due to limited personnel the TDS returns was late filed by the our department in this relation we request you that for such reasonable and unavoidable causes the late fees cannot be imposed on the assessee.*
- 2. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) has erred in sustaining the levy of penalty U/S 234E/154. Ld. CIT has not only failed to consider and appreciate the explanation given by the appellant in respect of the addition of Rs 10,230/- whereas the assessee is the Rajasthan State Government Department in the name and style of Block Development office, Chaksu to reform, improve and development of the villages and farmers at panchayat level with the various government projects. All the expenses was incurred for such projets by the Rajasthan Government. It means all the work was for the interest of the public. We have 37 panchayat in our jurisdiction. We also monitor more than 50 projects by checking, consideration on implementation, check progress report, meeting and coordination with the panchayat, monitor the payment of projects etc. with our limited staff.*

3. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the basic concept behind TDS is, to deposit the Tax on the income of deductee as he earns the income. Therefore deductor/recipient has deposited the tax timely. No such offence has been committed by the assessee that he deducted the TDS and not deposited the Tax and utilizing the money for his purpose. Therefore, no Late fees can be imposed on the assessee.*

4. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that as the Appellant was not in such condition to pay interest or penalty as late fee because that we have Rajasthan State Government Department in the name and style of Block Development office, Chaksu to reform, improve and development of the villages and farmers at panchayat level with the various government projects and for implementation of government project such as NAREGA, SWACHH BHARAT MISSION, PMGY etc. the fund release from the state government. We further submit that the allocated fund is being utilized in said projects for the public. No other balances or assets in the name of the Appellant except these specified reserve fund. That as per the above situation the payment of such late fee amount would cause genuine hardship to the Appellant. There is no default in deposition of TDS as per applicable rates*

The Appellant has already co-operated in each inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

If the burden of such amount goes on the Appellant, than it would cause genuine hardship to the Appellant. It means it would be difficult to the Appellant to arrange such late fees amount because that the Appellant not having neither assets nor fund to clear such amount.

5. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Sub section (3) of the section 234E of the Act states that it shall be paid before delivering a TDS statement. It*

means that any late fees should have been deposited just at the time of delivering TDS statement and not later than this.

That once the TDS statement has been accepted without late fees and then such late fee cannot be recovered later on. In the view of the above, late fee cannot be recovered later on by way of any notice, no notice of demand U/s 156 can be issued for this.

6. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the Provisions of Sec.204 of the Act has made the person responsible for Sec. 190 to Sec. 203AA and Sec.285, this phrase does not cover Sec.234E, it means no one is responsible for default U/s 234E of the Act. Its also clears that if late fees are due but not deposited along with the TDS statement anyone cannot be held responsible to deposit it later on. That the order of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, against the facts and circumstances of the case, illegal and be therefore quashed outright.*
7. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the sec.200A of the Act does not permit processing of TDS statement for default in payment of late fees, except any arithmetical error, or incorrect claim, or default in payment of interest and TDS payable or refundable etc. Hence late fees for TDS quarterly statement cannot be recovered by way of processing under section 200A. Therefore demand notice cannot be issued under this section, but if issued, then it is illegal, hence liable to be cancelled.*
8. *That the Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the recovery can be made of any amount which is legally payable, if the amount has not become legally payable, then how the recovery can be made for late fee.*
9. *That the Appellant prays that the penalty of Rs. 22,200 made in respect of section 234E be deleted.*
10. *That the appellant prays for leave to add, alter, and amend the aforesaid grounds of appeal at or before the time of hearing of appeal."*

2. In all these appeals, common issues are involved, therefore, for the sake of convenience and brevity, a common order is being passed. The hearing of these appeals was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. The assessee is an officer/authority of Government of Rajasthan, responsible for block and panchayat level development programs of the State as well as Central Government schemes/projects such as NAREGA, Swachh Bharat Mission, PMGY etc. The assessee has made various payments in respect of carrying out these development works under these schemes of the government and deducted TDS on these payments. However, the TDS statement as required U/s 200(3) of the Act for each quarter were not submitted in time and there was a delay in submission of the quarterly TDS statements for all these quarters involved in these appeals. Initially the assessee submitted quarterly statements for the F.Y. 2015-16 on 19/02/2016 which were processed U/s 200A of the Act on 23/02/2016 and accordingly, the intimation was issued. Thereafter the assessee submitted rectification statements on 05/04/2018 and the A.O. has issued a rectified intimation U/s 154 r.w.s. 200A of the Act. Thus, the A.O. while issuing the original intimation on 23/02/2016 as well as the rectified intimation on 05/04/2018 made the adjustments towards late fee U/s 234E of the Act.

3. The assessee challenged the action of the A.O. by filing the appeal before the Id. CIT(A) and contended that the A.O. was not justified in levying the late fee U/s 234E of the Act when the assessee duly deducted TDS and paid to the account of the central government within time but due to the circumstances as explained by the assessee, the assessee could not submit/deliver quarterly statement within the period stipulated as per Rule 31A of the Income Tax Rules, 1962 (in short, the Rules). The assessee has raised various grounds of challenging the order of the A.O. for levying the late fee U/s 234E of the Act while issuing the intimation U/s 154 of the Act. The Id CIT(A) did not accept the contention of the assessee.

4. Before the Tribunal, the Id AR of the assessee has submitted that the assessee was performing his functions/duties of implementation of government projects such as NAREGA, Swachh Bharat Mission, PMGY etc. and disbursed the payments in respect of these projects after deducting TDS within the time prescribed under the law. The assessee has also deposited TDS in the government account alongwith interest for the delay in such deposit. The Id AR has submitted the assessee's office is overlooking the development work of 37 Gram panchayats which includes collection of bills, monthly payments in respect of NAREGA, Swachh Bharat Mission, PMGY etc. the assessee's office is having limited

human resource and having only one accountant and therefore, it was almost impossible to spare time for submitting quarterly TDS statement/TDS returns as it requires professional help and consultation. Thus, due to paucity of the staff and technical knowledge, there was delay in submitting quarterly TDS statements. The Id AR has pointed out that the second quarter of F.Y. 2015-16, TDS statement was to be submitted on or before due date of 31/10/2015. However, the assessee filed statements on 19/02/2016. Thus, the Id AR has contended that the assessee was having reasonable cause for not submitting the quarterly TDS statement within prescribed period of limitation and therefore, the levy of late fee U/s 234E of the Act by the A.O. is not justified and the same may be deleted. He has explained the compelling circumstances under which the office of the assessee is functioning and not finding any time for submitting the statements as required U/s 200(3) of the Act. The Id AR has submitted that though subsequently the assessee has taken the help of the professional experts and started filing TDS statements in time, therefore, this default in submitting TDS statements is neither willful nor deliberate but due to unavoidable circumstances as the provisions of Section 200A of the Act were amended in the year itself to incorporate the levy of late fee adjustment U/s 234E of the Act while issuing the intimation to TDS returns. Thus, the Id AR has

submitted that after accepting the statements of TDS, the late fee levied by the A.O. U/s 234E of the Act while issuing the intimation by invoking the provisions of Section 154 of the Act is illegal and arbitrary and liable to be deleted.

5. On the other hand, the Id DR has submitted that the levy of late fee U/s 234E of the Act is mandatory and consequential in nature and therefore, the reasonable cause for default of not submitting the TDS statements cannot be considered a ground for deletion of such levy. She has further contended that this is not a penalty levied under Chapter-XXI of the Act which can be deleted if the assessee explained a reasonable and bonafide cause. Thus, a levy of late fee for default in furnishing the statements is required U/s 200(3) as well as Section 206C(3) of the Act. Therefore, the A.O. is having no discretion to levy or not to levy the penalty but it is mandatory once there is a default in furnishing the TDS statements on the part of the assessee. The Id DR has further contended that that Section 154 of the Act envisages amendment in intimation issued U/s 200A(1) of the Act and therefore, there is no error or illegality in the order of the A.O. passed U/s 154 of the Act and levying the fee for default in furnishing the TDS statement. Thus, the Id DR has contended that the reasons explained by the assessee for default are not relevant for the purpose of late fee levied

U/s 234E of the Act. She has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as relevant material on record. There is no dispute as regard the delay in submitting quarter TDS statements under Form No. 24Q as the assessee has filed quarterly statement for the F.Y. 2015-16 only on 19/02/2016, therefore, there was a delay so far as second quarter and third quarter of F.Y. 2015-16 in filing the quarterly statement for which these four appeals are filed by the assessee. As regards the delay in respect of third and fourth quarter of F.Y. 2016-17, the assessee filed quarterly statement on 12/06/2017 and therefore, there was a delay of 132 days and 12 days respectively for these two quarters of F.Y. 2016-17. The assessee has raised objection against the validity of the order passed by the A.O. whereby the intimation dated 05/4/2018 were issued after making adjustment on account of late fee U/s 234E of the Act. Chapter XVII of the Act cast obligation on persons responsible for paying certain amounts to deduct TDS as well as TCS at source. The dispute before us in these six appeals of the assessee is regarding the obligation of TDS and submission of quarterly TDS statements as required U/s 200(3) of the Act, which reads as under:

“Section 200- Duty of person deducting tax.

[(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section [192](#) shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, ²⁴[prepare such statements for such period as may be prescribed] and deliver or cause to be delivered to the prescribed income-tax authority ²⁵ or the person authorised by such authority such statement in such form²⁶ and verified in such manner and setting forth such particulars and within such time as may be prescribed:]

*[**Provided** that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.]”*

The quarterly TDS statement as well as annual TDS returns are required to be processed U/s 200A of the Act which reads as under:

“Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source ¹²[or a correction statement] has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section [200](#), such statement shall be processed in the following manner, namely:—

- (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
- ¹³(c) the fee, if any, shall be computed in accordance with the provisions of section [234E](#);
- (d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section [200](#) or section [201](#) or section [234E](#) and any amount paid otherwise by way of tax or interest or fee;
- (e) an intimation shall be prepared or generated and sent to the deductor specifying

the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

- (f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:]

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme¹⁴ for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.]

Section 200A(1) of the Act envisages the method and various adjustments which are required to be made by the A.O. while processing the statement of TDS and issuing intimation. Clause (c) of sub section (1) of Section 200A of the Act provides for adjustment on account of fee if any to be computed in accordance with the provisions of Section 234E of the Act. Therefore, in case, there is a default or delay in submitting the TDS statements, a late fee is levied as contemplated U/s 234E of the Act and the A.O. while processing the statements of TDS shall make the adjustment on this account. Thus, so far as the nature of levy U/s 234E of the Act is concerned, it is mandatory in nature and the A.O. has no discretion to take its own decision but he has to make the adjustment

on account of levy of late fee as provided U/s 234E of the Act in case there is a delay in submitting the TDS statement. The levy has to be computed in accordance with the rate prescribed U/s 234E of the Act.

7. As regards the quarterly TDS statements for the F.Y. 2016-17, the assessee initially filed statements on 12/06/2017 and consequently the A.O. issued intimation U/s 200A of the Act on 15/06/2017 whereby the adjustment on account of late filing fee U/s 234E of the Act was made by the A.O. These facts are not in dispute in so far as the delay in filing the quarterly statements. Since the assessee has filed rectification statements on 05/04/2018, therefore, the A.O. has again issued intimation U/s 154 r.w.s. 200A of the Act. The assessee has not pointed out any mistake in issuing the intimation by the A.O. on account of computation of period of delay or quantification of the late filing fee U/s 234E of the Act. Therefore, as far as merits of the appeals are concerned, we do not find any substance or merits in these appeals as the delay in filing the quarterly statement is accepted by the assessee. The only plea raised by the assessee before the Id. CIT(A) as well as before us is the explanation for such delay in filing quarterly statement. However, since the levy of late fee as prescribed U/s 234E of the Act is mandatory and consequential, therefore, the same cannot be deleted on the ground of reasonable cause as explained by the assessee. It is

pertinent to mention that though the intimation issued U/s 200A of the Act is an appealable order, however, the said order can be challenged only on the ground that the adjustment made by the A.O. or intimation issued U/s 200A of the Act is not in accordance with the provisions of Section 234E or Section 200A of the Act. Only if the A.O. has failed to comply with the mandatory provisions of these Sections while making the adjustment and issuing the intimation, the same can be challenged in the appeal. In absence of any such allegation that the A.O. has violated any of the provisions of Section 234E or Section 200A of the Act, the adjustment made by the A.O. on account of late filing fee U/s 234E of the Act cannot be deleted. Accordingly, all the appeals of the assessee are dismissed.

8. In the result, all these six appeals of the assessee are dismissed.

Order pronounced in the open court on 19th June, 2020.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 19/06/2020

*Ranjan

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

1. अपीलार्थी / The Appellant- Block Development Officer, Chaksu.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., CPC-TDS, Gaziabad.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 891 to 896/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar