

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.127/Ahd/2022
Assessment Year: 2020-21**

Kanta Govind Singh,
108 48K Bhat Road,
Koteshwar – 382428.
Gandhinagar.
[PAN – AAQPS 6785 C]
(Appellant)

vs. Asstt. Commissioner of Income Tax
CPC TDS, Ghaziabad.

(Respondent)

Assessee by : Shri Sanjay R. Shah, AR
Respondent by : Shri Dileep Kumar, Sr. DR

Date of hearing : 10.05.2023
Date of pronouncement : 17.05.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Assessee against order dated 06.09.2021 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2020-21.

2. The Assessee has raised the following ground of appeal :-

“1. *The learned Assessing Officer has erred in law as well as on facts of the case of the appellant by levying late filing fees of Rs.1,05,400/- on account of procedural error in filing prescribed TDS form on account of old age and human error. The learned Commissioner of Income Tax (Appeals) also erred in confirming the same.*”

3. The assessee is a resident senior citizen aged 85 years. During the year under consideration the assessee purchased a house property which was jointly co-owned by Vipul Taneja and Aparajita Bhalla. Both the co-owners of the house property were non-residents in India during the year under consideration and thus the assessee deducted tax at source on the sale consideration as per provision of Section 195 of the Income Tax Act, 1961. Both the non-resident sellers of the property obtained lower tax certificate from their respective jurisdiction Assessing Officer as per provisions of Section 197 of the Act specifying TDS rate at 2.38% (excluding

applicable surcharge and education cess) on the sale consideration amount of the house property as referred earlier. Accordingly on the date of payment/credit of sale consideration on 20.06.2019 the assessee deducted TDS of Rs.7,11,218/- being 2.85% (i.e. 2.38% +15% surcharge & 4% education cess) on total sale consideration of Rs.2,49,55,000/- (each co-owner share being Rs.1,24,77,500/- towards sale consideration and Rs.3,55,609/- towards TDS). Thereafter, the assessee deposited the total TDS amount of Rs.7,11,218 to the account of the Central Government on the same day i.e. 20.06.19 without any delay though the due date for payment of TDS was 07.07.2019 (i.e. on or before seventh day after the end of the month in which TDS is deducted as per provisions of Rule 30 of the Income Tax Rules, 1962). Due to very old age, the assessee on account of human error forgot to file the TDS return in Form 27Q by the end of the month following the quarter in which TDS is deducted i.e. on or before 31st July, 2019. Due to weak health and thereafter on account of outbreak of Covid-19, the assessee got to know in the month of Jan 2021 that the TDS return for the quarter ending June 2019 was not filed and accordingly in order to comply with the income tax procedures the assessee arranged to file the said return on 08.01.2021. The return filed in Form 27Q was processed by the Assessing Officer TRACES and intimation dated 12.01.2021 under Section 200A of the Act was issued after levying of late filing fees of Rs.1,05,400/- as per section 234E of the Act.

4. Being aggrieved by the intimation processed under Section 200A of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The present appeal is filed belatedly after 175 days for which the assessee has explained the delay which was during the Covid-19 period and extension of 90 days period was granted by the Hon'ble Apex Court on 10th January, 2022 and hence there is no delay as per the submission of the Ld. AR.

6. The Ld. AR submitted that the procedural error in filing the TGDS return is just on account of human error due to old age and with no malafide intention of being non-co-operative to income tax compliances. The Ld. AR further submitted that the assessee had deposited the tax amount of Rs.7,11,128/- to the account of the Central Government on the date of deducting the tax itself i.e. 20th June, 2019 without keeping

the tax amount with the assessee even for a single day and also much in advance from the due date of depositing the tax for the month of June 2019 i.e. 7th July, 2019. The Ld. AR submitted that the non-resident sellers of the property duly received credit of the tax amount without any error or omission. The Ld. AR submitted that the Assessing Officer ought not to have levied such a heavy late filing fees only on account of procedural error of filing the prescribed form in a situation when there is no loss to revenue either on account of tax or interest.

7. The Ld. DR submitted that Section 234E of the Act provides for mandatory filing TDS statement and, therefore, the CIT(A) was right in confirming the levy of fee under section 234E of the Act.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee being senior citizen has deposited TDS amount immediately after sale consideration was received and there was no lapse on the part of the assessee while depositing the TDS amount to the Treasury of Government of India. Due to the circumstances, the assessee could not file form 27Q within the time frame, but the assessee's intention is clear as the assessee filed the same in January 2021. Thus, merely on the ground that the assessee has not filed Form 27Q on 31.07.2019 and thus late filing cannot be the criteria for levying fees under Section 234E of the Act. Under the current circumstances, in the present case, it will be appropriate to delete the said levy of fee. Appeal of the assessee is thus allowed.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 17th May, 2023.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th day of May, 2023

PBN/*

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad