-

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No.:-2649/Del/2018
Assessment Year: 2014-15

Meghna Gupta, H.No. 1441, Sector-14, Faridabad	Vs.	ACIT, CPC-TDS, Ghaziabad
(Appellant)		**(Respondent)**

Assessee by:	Shri Rakesh Gupta, Advocate Shri Somil Agarwal, Advocate
Department by :	Shri Sujit Kumar, Sr. DR
Date of Hearing	03/07/2018
Date of pronouncement	01/10/2018

O R D E R

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 1.3.2018, passed by Ld. CIT (Appeals), Faridabad in relation to the order passed u/s 200A read with section 234E for A.Y. 2014-15. In the grounds of appeal, the assessee has raised various grounds to challenge the levy of fee/penalty u/s 234E by the Assessing Officer. The relevant grounds raised by the assessee reads as under:-

1) "That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the order of Ld. AO levying fee / penalty u/s 234E and holding the assessee as "assessee in default" u/s 201 and has further erred in charging interest u/s 201 and section 220.

2) That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in holding that the "assessee in default" even though there was no default committed by the appellant in respect of provisions of section 194 IA.

*3) That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 201 for a sum of Rs. 18,348/- (Being Rs. 2,293.50*8).*

*4) That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 234E for a sum amounting to Rs. 94,909/- (Being Rs. 11863.66*8) on account of levy of late filing fee of TDS Statement.*

*5)That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in charging interest u/s 220(2) for a sum of Rs.16,800/- (Being Rs. 2,100*8).*

6) That having regard to the fact and circumstances of the case, Ld. CIT (A) has erred in law and on facts in holding that levy fee u/s 234E was chargeable, despite the fact that period involved is prior to 01.06.2015.

7) That in any view of the matter and in any case action of Ld. CIT(A) in confirming the order of Ld. A.O. is bad in law and against the facts and circumstances of the case.

8) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in passing the impugned order and that too without giving adequate opportunity of hearing and without observing the principle of natural justice.

9) That the appellant craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other."

2. The facts in brief are that the assessee alongwith other co-owners of the family, namely, Smt. Shakuntla Gupta & Smt. Himani Gupta had purchased a property from eight persons for sums aggregating to Rs. 3,35,00,000/-; and each seller was paid sum of Rs.41,87,500/-. Later on department issued intimation-cum-demand notice u/s 200A raising following demands:-

u/s 201	Rs. 18,348/-
u/s 234E	Rs. 94,909/-
u/s 220(2)	Rs. 16,800/-
Total	Rs. 1,30,057/-

The said order has been passed by AO/CPC, that statement of TDS u/s 194 IA has not been filed within time by the assessee.

3. Before the Ld. CIT (A), the assessee's contention has been that, *firstly,* each of the sellers were paid less than amount of Rs. 50 lacs in respect of the shares and therefore, provision of section 194IA was not applicable; and s*econdly,* assessee had purchased the property on 6.12.2013 and there are various decisions wherein it has been held that fee u/s 234E is not leviable for the period prior to 1.4.2015. However, Ld. CIT (A) has dismissed the assessee's appeal on the ground that, *firstly*, property may have been purchased from 8 persons but the consideration paid is Rs. 3,35,00,000/- which for a single sale deed, therefore, assessee was liable to deduct u/s 194IA and once assessee has failed to do so, then charging of interest u/s 201 and 220(2) is justified. As regards the issue of levy fee u/s 234E, he held that the same has been levied on 6.5.2017 which is after 1.4.2015.

4. Before us, Ld. Counsel Shri Rakesh Gupta at the outset submitted that it was brought to the notice of the department that, assessee has paid the tax from her own pocket even though the assessee's contention has been that payment has been made separately to each of the vendors which was below the threshold limit of Rs. 50 lacs, therefore, she was not required to deduct TDS u/s 194IA. From No. 26QB and challan of tax deposited were generated on 5.4.2014 from the electronic system which is evident from the orders

passed, which clearly mentions the date of filing of challan cum statement as **"5.4.2014"**. Thus, levy of fee u/s 234E is not applicable at all, because there is no delay in filing of the said statement as the same was filed alongwith the tax deposited. He submitted that, from the plain reading of section 234E, section 200(3) r.w. Rule-31A (4A), fee u/s 234E is leviable only when the statement is not filed as prescribed u/s 200(3), which in turn provides the statement is to be filed after payment of tax to the prescribed authority as per prescribed Rule- 31A(4A). The said Rule provides for filing of '**challan cum statement**' within seven days from the date of deduction. Since, challan cum statement has been filed by the assessee on 05.04.2014 after paying the tax as required u/s 200(3), therefore, there was no default so as to warrant levy fee u/s 234E. In other words Rule-31A(4A) merely refers to challan cum statement that means that filing of the statement after the tax stands paid. He submitted that had the filing of the statement was envisaged with reference to the date of deduction, then how could the word 'challan' appear in the said sub Rule. 'Challan' word indicates that tax must stand paid and in fact form 26QB is generated simultaneously with the tax paid challan. He further submitted that the tax has been paid and statement has been filed immediately, thus, there is no loss to the revenue; and even if it is taken that there was delay in filing the statement, then it was at best a technical or venial breach, which should be ignored as held in the

decisions reported at Mahavir AGENCY vs. Income Tax OFFICER 58 ITD 386 (Ahmadabad), Income Tax Officer vs. Alhusain Constructions (P) ltd. 68 ITD 390 (Mumbai). The object of introducing section 234E to curb a situation where tax was used to be deducted but statement would not be uploaded by the assessees and such inaction on the part of the assessee would deprive the department to give credit to the person in whose account tax was deducted. In the instant case, tax was paid on 5.4.2014 and statement was filed on 5.4.2014, there could not have been any inconvenience to the department in giving credit to the person concerned. Thus, object behind the levy of fee u/s 234E stood achieved in the present case and for this reason also, there was no reason fee u/s 234E should be levied.

5. On the other hand, Ld. DR submitted that once assessee has not deducted the TDS at the time of purchase, then there was a clear cut default and assessee was also liable for levy of fee u/s 234E read with section 200A. He thus strongly relied upon the order of the Ld. CIT (A).

6. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. At the outset, from the perusal of the rectification order u/s 200A generated by TDS (CPC), it is noticed that the TDS in 26QB mentions date of filing of 'challan cum statement' as 5.4.2014, wherein late filing of 'challan cum statement' u/s 234E has

been levied. The assessee had purchased the property on 6.12.2013 i.e., relevant to the assessment year 2014-15. Since assessee had purchased the property from eight sellers and the payment to each of the seller has been made separately for an amount of Rs. 41,87,500/- aggregating to Rs. 3,35,00,000/-, the assessee' contention has been that it was not required to deduct TDS, because the payments made to each seller was less than the prescribed limit of Rs.50 lacs and therefore, provision of section 194IA was not applicable. The demand has been raised by the department u/s 200 in terms of failure to comply with Section 200A, which deals with the processing of statement of tax deducted at source u/s 200. First of all, sub section 3 of section 200 provides that the person deducting any sum in accordance with provision of chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statement for such period as may be prescribed. Provision of section 200A provides that where the statement of tax deduction at source has been made by the person deducting any sum u/s 200, then such statement shall be processed in the manner given therein. Clause (c) of section 200A has been substituted by the Finance Act 2015 w.e.f. 1.6.2015 which reads as under:-

> "(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"

6.1 Fee for default u/s 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed u/s 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee u/s 234E is leviable if the statement is not filed as prescribed u/s 200(3) which in turn provides that the statement to be filed after the payment of tax to the prescribed authority. The relevant rule 31A(4A) provides that for filing of the 'challan cum statement' within seven days from the date of deduction. Now here in this case the demand has been raised purely on the ground that statement has not been furnished for the tax deduction at source. As stated above, the assessee has duly deposited the tax not at the time of purchase *albeit* on 5.4.2014 and on the same date, statement has also been filed. The relevant provision of section 200(3) read with rule 31A (4A) only refers to filing of 'challan cum statement' after the tax has been paid. The word "challan" in the said rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, here in this case, it cannot be held that there is any violation of section 200(3). In any case, the levy of fee u/s 200A in accordance with the provision of section 234E has come into the statute w.e.f. 1.6.2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied u/s 200A. This has been clarified and held by Hon'ble Karnataka High Court in the case of **Fatheraj Singhvi & Ors vs. Union of India** reported in

(2016) **289 CTR 0602,** wherein the lordship had made following observations :-

> *"14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under Section 200A was that, the provision of Section 200A(1)(c), (d) and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made."*

7. Thus, we hold that no fee was leviable to the assessee u/s 234E in violation of section 200(3), because assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E is cancelled.

8. Similarly interest u/s 220(2) cannot be levied when fee u/s 234E itself is not leviable. In so far as charging of interest u/s 201(IA), the same cannot be charged as admittedly no order u/s 201(1) has been

passed holding the assessee to be "assessee in default" and, therefore, such an interest is also deleted.

8. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 01 /10/2018.

sd/-	**sd/-**
(L.P. SAHU)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 01/10/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi