

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.1019, 1020 & 1021/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

Smt. G. Indhirani,
11/105, Seerangan Street,
No.5, Sangeevrayan Pet,
Salem – 636 006.

v. The Deputy Commissioner of
Income Tax, CPC – TDS,
TDS – CPC, Aaykar Bhavan,
Sector – 3, Vaishali, Ghaziabad,
Uttar Pradesh – 201010.

PAN : AAHPI 0407 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1089/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Rajaguru Spinning Mills Ltd.,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638 001.

v. The Deputy Commissioner of
Income Tax, CPC – TDS,
TDS – CPC, Aaykar Bhavan,
Sector – 3, Vaishali, Ghaziabad,
Uttar Pradesh – 201010.

PAN : AAACR 9898 Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1090/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

Shri A. Dhakshinamurthy,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638 001.

v. The Deputy Commissioner of
Income Tax, CPC – TDS,
TDS – CPC, Aaykar Bhavan,
Sector – 3, Vaishali, Ghaziabad,
Uttar Pradesh – 201010.

PAN : ACGPD 9193 F

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1091/Mds/2015
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Padma Textiles,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638 001.

v.

The Deputy Commissioner of
Income Tax, CPC – TDS,
TDS – CPC, Aaykar Bhavan,
Sector – 3, Vaishali, Ghaziabad,
Uttar Pradesh – 201010.

PAN : ACGPD 9193 F
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1092/Mds/2015
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Murthy Lungi Company,
C/o Shri S. Sridhar, Advocate,
112/1, Periyar Street,
Erode – 638 001.

v.

The Deputy Commissioner of
Income Tax, CPC – TDS,
TDS – CPC, Aaykar Bhavan,
Sector – 3, Vaishali, Ghaziabad,
Uttar Pradesh – 201010.

PAN : AAHFM 9766 E
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 25.06.2015
घोषणा की तारीख/Date of Pronouncement : 10.07.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All these appeals of the different assesseees are directed against the respective orders of the Commissioner of Income Tax (Appeals), Salem. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing the same by this common order.

2. The only issue arises for consideration is with regard to levy of fee under Section 234E of the Income-tax Act, 1961 (in short 'the Act') while processing the statement furnished by the assesseees under Section 200A of the Act.

3. Shri S. Sridhar, the Ld.counsel for the assesseees, submitted that under Section 200A of the Act, the statement filed by the assessee has to be processed in the manner in which it was laid down. Levy of fee under Section 234E of the Act cannot be a subject matter of process, while processing the statement under Section 200A of the Act. Referring to Finance Act, 2015, the Ld.counsel pointed out that with effect from 01.06.2015, the Parliament by way of amendment to Section 200A of the Act empowered the Assessing Officer to levy fee under Section 234E of the Act while processing under Section 200A of the Act. Therefore, according to the Ld.counsel, prior to 01.06.2015, the Assessing Officer had no authority to levy fee, if any, under Section 234E of the Act. Referring to the decision of Amritsar Bench of this Tribunal in I.T.A. No.90/Asr/2015 dated 09.06.2015, the Ld.counsel pointed out that prior to 01.06.2015, there was no enabling provision in Section 200A for raising a demand in respect of levy of fee under Section 234E of the Act. Therefore, according to the Ld. counsel,

the fee levied under Section 234E of the Act, while processing the statement filed under Section 200A of the Act is not justified. According to the Ld. counsel, levy of fee under Section 234E of the Act while processing the statement is beyond the scope of Section 200A of the Act.

4. The Ld.counsel invited our attention to Section 234A of the Act and submitted that when an assessee fails to deliver the statement within the prescribed time, the assessee is liable to pay by way of fee a sum of ₹200/- for every day during such a period the failure continues. Referring to the word used in the section 234E “he shall be liable to pay”, the Ld.counsel pointed out that the assessee is liable to pay fee. However, it does not empower the Assessing Officer to levy the fee. Section 234E(3) of the Act provides for payment of the fee before delivery of statement under Section 200(3) of the Act. Therefore, the fee has to be paid by the assessee voluntarily before filing the statement under Section 200(3) of the Act and the assessing authority has no power to levy the fee.

5. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that Section 234E of the Act provides for payment of fee, if the assessee fails to deliver the statement as

prescribed in Section 200(3) of the Act. Therefore, the Assessing Officer has every authority to levy fee either by a separate order or while processing the statement under Section 200A of the Act.

6. We have considered the rival submissions on either side and perused the relevant material on record. Section 200A of the Act provides for processing of the statement of tax deducted at source by making adjustment as provided in that Section. For the purpose of convenience, we are reproducing the provisions of Section 200A of the Act:-

“200A. (1) Where a statement of tax deduction at source 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 ;

(c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest ;

(d) 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 (c) ; and

(e) the amount of refund due to the deductor in pursuance of the determination under clause (c) 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 scheme 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.

7. The Assessing Officer cannot make any adjustment other than the one prescribed above in Section 200A of the Act. By Finance Act, 2015, with effect from 01.06.2015, the Parliament amended Section 200A by substituting sub-section (1) of clauses (c) to (e). For the purpose of convenience, we are reproducing the amendment made in Section 200A by the Finance Act, 2015 as under:-

“In section 200A of the Income-tax Act, in sub-section (1), for clauses (c) to (e), the following clauses shall be substituted with effect from the 1st day of June, 2015, namely:-

“(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.”

Therefore, it is obvious that prior to 01.06.2015, there was no enabling provision in Section 200A of the Act for making adjustment in respect of the statement filed by the assessee with regard to tax deducted at source by levying fee under Section 234E of the Act. The Parliament for the first time enabled the Assessing Officer to make adjustment by levying fee under Section 234E of the Act with effect from 01.06.2015. Therefore, as rightly submitted by the Ld.counsel for the assesseees, while processing statement under Section 200A of the Act, the Assessing Officer cannot make any

adjustment by levying fee under Section 234E prior to 01.06.2015. In the case before us, the Assessing Officer levied fee under Section 234E of the Act while processing the statement of tax deducted at source under Section 200A of the Act. Therefore, this Tribunal is of the considered opinion that the fee levied by the Assessing Officer under Section 234E of the Act while processing the statement of tax deducted at source is beyond the scope of adjustment provided under Section 200A of the Act. Therefore, such adjustment cannot stand in the eye of law.

8. The next contention of the assessee is that Section 234E of the Act says that the assessee "shall be liable to pay" by way of fee, therefore, the assessee has to voluntarily pay the fee and the Assessing Officer has no authority to levy fee. The argument of the Ld.counsel for the assessee is very attractive and fanciful. However, we do not find any substance in that argument. When Section 234E clearly says that the assessee is liable to pay fee for the delay in delivery of the statement with regard to tax deducted at source, the assessee shall pay the fee as provided under Section 234E(1) of the Act before delivery of the statement under Section 200(3) of the Act. If the assessee fails to pay the fee for the periods of delay, then the assessing authority has all the powers to levy fee

while processing the statement under Section 200A of the Act by making adjustment after 01.06.2015. However, prior to 01.06.2015, the Assessing Officer had every authority to pass an order separately levying fee under Section 234E of the Act. What is not permissible is that levy of fee under Section 234E of the Act while processing the statement of tax deducted at source and making adjustment before 01.06.2015. It does not mean that the Assessing Officer cannot pass a separate order under Section 234E of the Act levying fee for the delay in filing the statement as required under Section 200(3) of the Act.

9. The contention of the assessee can also be examined in the light of the provisions of Indian Penal Code. Section 396 of Indian Penal Code provides for punishment for dacoity with murder. The punishment is imprisonment for life or rigorous imprisonment for a term which may be extended to ten years and also liable to fine. For the purpose of convenience, we are reproducing Section 396 of Indian Penal Code, hereunder:-

“396. Dacoity with murder - If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a

term which may extend to ten years, and shall also be liable to fine.”

Similarly, Section 408 of Indian Penal Code provides for criminal breach of trust by a clerk or servant. In addition to imprisonment which may extend to seven years, the accused who is found to be guilty shall also be liable to fine. Similarly, the other provisions of Indian Penal Code also say that in addition to imprisonment, the accused shall be liable to pay fine. The language used by the Parliament in Indian Penal Code is “shall also be liable to fine”. This means that the Magistrate or Sessions Judge, who tries the accused for an offence punishable under the provisions of Indian Penal Code, in addition to punishment of imprisonment, shall also levy fine. If the contention of the Ld.counsel for the assessee is accepted, then the Magistrate or Sessions Judge, as the case may be, who is trying the accused for the offence punishable under Indian Penal Code, may not have authority to levy fine.

10. It is well known principle that the fine prescribed under the Indian Penal Code has to be levied by the concerned Magistrate or Sessions Judge who is trying the offence punishable under the Indian Penal Code. Therefore, the contention of the Ld.counsel that merely because the Parliament has used the language “he shall be

liable to pay by way of fee”, the assessee has to pay the fee voluntarily and the Assessing Officer has no authority to levy fee could not be accepted. No one would come forward to pay the fee voluntarily unless there is a compulsion under the statutory provision. The Parliament welcomes the citizens to come forward and comply with the provisions of the Act by paying the prescribed fee before filing the statement under Section 200(3) of the Act. However, if the assessee fails to pay the fee before filing the statement under Section 200(3) of the Act, the assessing authority is well within his limit in passing a separate order levying such a fee in addition to processing the statement under Section 200A of the Act. In other words, before 01.06.2015, the assessing authority could pass a separate order under Section 234E levying fee for delay in filing the statement under Section 200(3) of the Act. However, after 01.06.2015, the assessing authority is well within his limit to levy fee under Section 234E of the Act even while processing the statement under Section 200A and making adjustment.

11. In view of the above discussion, this Tribunal is of the considered opinion that the Assessing Officer has exceeded his jurisdiction in levying fee under Section 234E while processing the

statement and make adjustment under Section 200A of the Act. Therefore, the impugned intimation of the lower authorities levying fee under Section 234E of the Act cannot be sustained in law. However, it is made clear that it is open to the Assessing Officer to pass a separate order under Section 234E of the Act levying fee provided the limitation for such a levy has not expired. Accordingly, the intimation under Section 200A as confirmed by the CIT(Appeals) insofar as levy of fee under Section 234E is set aside and fee levied is deleted. However, the other adjustment made by the Assessing Officer in the impugned intimation shall stand as such.

12. In the result, all the appeals filed by the assesseees are allowed as indicated above.

Order pronounced on 10th July, 2015 at Chennai.

sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 10th July, 2015.
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

अपीलार्थी/Appellant / प्रत्यर्थी/Respondent / आयकर आयुक्त (अपील)/CIT(A),
Salem / आयकर आयुक्त/CIT, TDS, Chennai / विभागीय प्रतिनिधि/DR / गार्ड
फाईल/GF.