

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
KOCHI**

**BEFORE S/SHRI B P JAIN, AM & GEORGE GEORGE K, JM
ITA No 258/Coch/2016
(Asst Year 2013-14)**

&

Stay Petition No. 37/Coch/2016

Little Servants of Divine Providence Providence Charitable Trust Providence Home Kunnamathanam Pathanamthitta	Vs	The Income Tax Officer(TDS) Alappuzha
(Appellant)		(Respondent)

PAN No.	AAATL2831J
Assessee By	Sh Joy Kuriakose
Revenue By	Sh A Dhanaraj, Sr DR
Date of Hearing	7 th Sept 2016
Date of pronouncement	9 th Sept 2016

ORDER

PER GEORGE GEORGE K, JM:

This appeal, at the instance of the assessee is directed against the CIT(A)'s order dated 21.3.2016. The relevant assessment year is 2013-14. The assessee has also filed a stay petition seeking stay of recovery of outstanding tax arrears amounting to Rs.66,080/-.

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2 There is a delay of 3 days in filing this appeal. The assessee society had filed condonation petition along with an affidavit of Sr. Mary Jincy, who is the President of the assessee society.

3 We have perused the affidavit filed by Sr Mary Jincy and are convinced that there is sufficient reasons for belated filing of the appeal and the delay was not deliberate and no latches can be attributed to the assessee's society in filing the appeal belatedly. Hence, we condone the delay in filing the appeal and proceed to dispose off the appeal on merits.

4 The grounds raised as follows:

1. *That the Ld. Assessing officer (TDSCPC) had levied a late fees of Rs. 66,080 1- & issued order Vis 200A of the Act.*
2. *Prior to 01.06.2015 the Assessing Authority had no authority to levy fee, if any under See 234E of the Act. Learned counsels have argued in various tribunals that prior to 01.06.2015, there was no enabling section under See 200A of the Act for raising a demand in respect of levy of fee under Section 234E of the Act.*
3. *Accordingly the 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 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 litigation of the authorities in levying fee cannot be sustained under law*
5. *Please find attached ITAT Chennai (2015) Tax Corp (A.T) 41754 order attached in the case of Mis Neelagiris Textiles, Pallipalayam Vs The Deputy Commissioner of Income Tax, CPC- TDS, TDS CPC Uttar Pradesh dated July 102015 for your review and on which case I base my arguments*
6. *In view of the above submissions order Uls 200A of the Act imposing late fees Vis 234E has to be cancelled and quashed.*

5 The briefly stated the facts of the case are as follows:

The assessee is a charitable society registered /s 12A of the I T Act. It is also having exemption u/s 80G(v) of the I T Act. The assessee society had deducted tax from payments made to contractors and filed TDS statement for

the same. While processing the TDS statement, the Dy Commissioner of Central Processing Cell (TDS) observed that there is a delay in filing the statement and imposed late fee u/s 234E of the Act amounting to Rs. 42,210/- and Rs. 22,870/- for the 2nd and 3rd quarters of Financial Year 2012-13.

6 Aggrieved by the imposition of late fee u/s 234E of the Act, the assessee preferred appeal to the first appellate authority. The CIT(A) confirmed the imposition of late fee and dismissed the appeal filed by the assessee.

7 Aggrieved by the order of the CIT(A), the assessee is in appeal before us. The Id counsel for the assessee reiterated the submissions made before the income tax authorities. The Id DR present was duly heard.

8 We have heard the rival submissions and perused the material on record. The Finance Act, 2015 has amended section 200A of the Act with effect from 1.6.2015. The amendment is as follows:

In section 200A(1) of the Act, for clause(c) to (e), the following clauses were 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."

8.1 Thus, post 1st June 2015, in the course of processing of a TDS statement and issuance of intimation u/s 200A in respect thereof, an adjustment could also be made in respect of the 'fee', if any, shall be computed in accordance with the provisions of section 234E". Prior to 1st June 2015, there was no enabling provision therein for raising a demand in respect of levy of fees u/s 234E of the Act.

8.2 This issue has been elaborately considered by the Amritsar Bench of the Tribunal in the case of Sibia Healthcare (P) Limited Vs. Deputy Commissioner of Income Tax (2015) 61 Taxmann.com 70 and held that levy of fee u/s. 234E is beyond the scope of permissible adjustments contemplated u/s.200A. The relevant portion of the order of the Amritsar Bench of the Tribunal reads as follows:

"In view of the above discussions, in our considered view, the adjustment in respect of levy of fees under section 234E was indeed beyond the scope of permissible adjustments contemplated under section 200A. This intimation is an appealable order under section 246A(1)(a), and, therefore, the CIT(A) ought to have examined legality of the adjustment made under this intimation in the light of the scope of the section 200A. Learned CIT(A) has not done so. He has justified the levy of fees on the basis of the provisions of Section 234E. That is not the issue here. The issue is whether such a levy could be effected in the course of intimation under section 200A. The answer is clearly in negative. No other provision enabling a demand in respect of this levy has been pointed out to us and it is thus an admitted position that in the absence of the enabling provision under section 200A, no such levy could be effected. As intimation under section 200A, raising a demand or directing a refund to the tax deductor, can only be passed within one year from

the end of the financial year within which the related TDS statement is filed, and as the related TDS statement was filed on 19th February 2014, such a levy could only have been made at best within 31st March 2015. That time has already elapsed and the defect is thus not curable even at this stage. In view of these discussions, as also bearing in mind entirety of the case, the impugned levy of fees under section 234 E is unsustainable in law. We, therefore, uphold the grievance of the assessee and delete the impugned levy of fee under section 234E of the Act"

8.3. The Ahmedabad Bench of the Tribunal, in the case of Lions Club of North Surat Charitable Trust Vs. Income Tax Officer, (TOS)-II 2015(9) TMI 1231 and the Chennai Bench of the Tribunal in the case of Smt. G. Indhrani Vs. Deputy Commissioner of Income Tax, Centralized Processing Cell(TDS) (2015) 60 Taxmann.com 312 have followed the views taken by the Amritsar Bench of the Tribunal and decided the issue in favour of the assessee.

8.4 In view of the aforesaid reasoning and respectfully following the orders of the coordinate benches of the Tribunal, we delete the levy of late filing fee u/s 234E of the Act. It is ordered accordingly.

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

STAY PETITION No. 37/Coch/2016

10 Since the appeal filed by the assessee is decided in favour of the assessee; the stay petition filed by the assessee is rendered infructuous and the same is dismissed.

11 To sum-up, the appeal filed by the assessee is allowed whereas the Stay Petition filed by the assessee is dismissed.

Order pronounced in the open Court on this 9th, day of Sept 2016.

Sd/- (B P JAIN)	Sd/- (GEORGE GEORGE K)
Accountant Member	Judicial Member

Cochin: Dated 9th Sept 2016

Raj*

Copy to:

1. Appellant –
2. Respondent –
3. CIT(A, Kochi)
4. CIT, Alappuzha
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN