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Tribunal holds that fees under section 234E for default in furnishing TDS statements cannot be levied prior to 1 June 2015 in the absence of any enabling provision.

Issue no: GBTA/28/2015

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Synopsis

The Amritsar Bench of the Income-tax Appellate Tribunal in the case of Sibia Healthcare Private Limited has held that fees under section 234E of the Income-tax Act, 1961 (the Act) in respect of defaults in furnishing TDS returns cannot be levied prior to 1 June 2015 in absence of enabling provision for levy of such fees. The Tribunal held that, fees under section 234E could be levied in the course of processing of a TDS statement and issuance of Intimation under section 200A after 1 June 2015 as in respect thereof, an adjustment could also be made in respect of the fee, if any, computed in accordance with the provisions of section 234E of the Act.

Facts

- In case of the taxpayer company, Sibia Healthcare Private Limited, there was a delay in filing the TDS statement for the third quarter of the financial year 2012-13.
- The Assessing officer (TDS) (AO) processed the TDS statement and raised a demand vide Intimation under section 200A for levying fees under section 234E.
- Section 234E of the Act provides for prescribed fees payable by an assessee for delay in furnishing TDS statements.
- The Commissioner of Income-tax (Appeals) upheld the order of the AO.

Issue before the Tribunal

Whether, for the period prior to 1 June 2015, fees under section 234E in respect of defaults in furnishing TDS statements can be levied vide Intimation under section 200A?

Ruling of the Tribunal

- Section 200A of the Act provides that TDS statement filed under section 200 shall be processed and an Intimation shall be prepared after computing the sum payable or refund due as prescribed therein.
- The Tribunal held that section 200A has been amended by the Finance Act, 2015 with effect from 1 June 2015 due to which an adjustment in respect of a fee can be computed in accordance with the provisions of section 234E of the Act, at the time of processing of TDS statements and issuing the Intimation.
- The Tribunal held that prior to 1 June 2015, there was no enabling provision in the Act for raising a demand in respect of levy of fee under section 234E of the Act.
- The Tribunal observed that section 200A of the Act as it stood prior to 1 June 2015 permitted computation of the amount recoverable from, or payable to, the taxpayer after making the following adjustments:
 - on account of arithmetical errors and incorrect claims apparent on record; and
 - on account of interest, if any, computed on the basis of sums deductible as computed in the statement.
- The Tribunal observed that adjustment in respect of levy of fee under section 234E of the Act was beyond the scope of permissible adjustments provided in section 200A as it stood prior to 1 June 2015.
- The Tribunal held that, in the absence of any enabling provision for levy of fees under section 234E, prior to the amendment by the Finance Act, 2015 effective from 1 June 2015, no fees under section 234E of the Act can be levied.

Comments

The Bombay High Court in the case of Rashmikant Kundalia v/s. Union of India (2015) 373 ITR 268 (Bombay), on a writ petition challenging the constitutional validity of the section 234E of the Act, held that the levy of fee under section 234E of the Act was to regularize the late filing of TDS statements and upheld the constitutional validity of section 234E. The decision of the Bombay High Court is dated 6 February 2015 and so the amendment to section 200A by the Finance Act 2015 has not been considered therein. The above decision of the Bombay High Court has not been considered by the Amritsar Tribunal.

Source: Decision of the Amritsar Bench of the Income-tax Appellate Tribunal dated 09 June 2015, in the case of Sibia Healthcare Pvt. Ltd. vs. DCIT (TDS) (ITA No. 90/Asr/2015)

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