

## ITAT slams AO for levying sec. 234E fee before section came into existence

**Summary – The Delhi ITAT in a recent case of Meghna Gupta, (the Assessee) held that where in respect of purchase of property, assessee deposited tax at source under section 194-IA and also filed a statement to that effect much prior to date when section 234E came into existence i.e. 1-6-2015, impugned order levying fee under section 234E for violation of section 200(3) was to be set aside**

### Facts

- The assessee along with other co-owners of the family purchased a property from eight persons for sums aggregating to Rs. 3.35 crores and each seller was paid sum of Rs. 41.87 lakhs.
- Later on department issued intimation-cum-demand notice under section 200A raising demand under section 234E on ground that statement of TDS under section 194-IA had not been filed within time by the assessee.
- The assessee's contention in appellate proceeding was that firstly, each of the sellers were paid less than amount of Rs. 30 lacs in respect of the shares and therefore, provision of section 194-IA was not applicable; and secondly, assessee had purchased the property on 6-12-2014 and there were various decisions wherein it was held that fee under section 234E was not leviable for the period prior to 1-4-2015.
- However, the Commissioner (Appeals) dismissed the assessee's appeal on the ground that firstly, property may have been purchased from 8 persons but the consideration paid was Rs. 3.35 crores for a single sale deed, therefore, the assessee was liable to deduction under section 194-IA and once assessee had failed to do so, then charging of interest under sections 201 and 220(2) was justified. As regards the issue of levy fee under section 234E he held that the same had been levied on 6-5-2017 which was after 1-4-2015.
- On second appeal:

### Held

- At the outset, from the perusal of the rectification order under section 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' under section 234E has been levied. The assessee had purchased the property on 6-12-2013, *i.e.*, relevant to the assessment year 2014-15. Since the 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's 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 194-IA was not applicable. The demand has been raised by the department under section 200 in terms of failure to comply with section 200A, which deals with the processing of statement of tax

deducted at source under section 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 under section 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 with effect from 1-6-2015 which reads as under:-

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

- Fee for default under section 234E provides that, when a person fails to deliver or cause to be delivered a statement within the time prescribed under section 200(3), then that person shall be liable to pay fee in the manner provided therein. Thus, fee under section 234E is leviable if the statement is not filed as prescribed under section 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 had not been furnished for the tax deduction at source. As stated above, the assessee had duly deposited 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 under section 200A in accordance with the provision of section 234E has come into the statute with effect from 1-6-2015. Since the challan and statement has been filed much prior to this date, therefore, no such tax can be levied under section 200A.
- Thus, it is held that no fee was leviable to the assessee under section 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.
- Similarly interest under section 220(2) cannot be levied when fee under section 234E itself is not leviable. Insofar as charging of interest under section 201(IA), the same cannot be charged as admittedly no order under section 201(1) has been passed holding the assessee to be 'assessee-in-default' and, therefore, such an interest is also deleted.
- In the result, appeal of the assessee is allowed.