

CIT(A) cannot declare TDS return filed by assessee as non-est: ITAT

Summary – The Bangalore ITAT in a recent case of Manoj Kumar Jaiswal, (the Assessee) held that CIT(A) cannot declare TDS return filed by assessee as non-est

Facts

- The assessee filed statement of tax deducted at source beyond the stipulated due date and therefore the Assessing Officer levied late fee of Rs. 6,900 under section 234E.
- The Commissioner (Appeals) cancelled the order of the Assessing Officer stating that there would be no fee for delayed filing of TDS return and in exercise of his power of enhancement, held that TDS statement filed beyond stipulated due date and without payment of fee under section 234E was non-est in law.
- Before the Tribunal, the assessee contended that the Commissioner (Appeals) could not use power of enhancement for purpose of declaring the TDS statement as non-est.

Held

- The Tribunal held that there is no such power conferred to declare the return of TDS filed under section 200(3) as non-est. The Act only contains provision for declaring a return of income filed as invalid under section 139(9) but there is no such provision in case of TDS returns. Thus as per the Act a return of TDS cannot be declared as non-est. Section 234E(3) lays down that the fee shall be paid under section 234E before the return of TDS is filed. This provision does not give any power to the Commissioner (Appeals) to declare the TDS return as non-est in law in case the TDS return is filed without payment of fee under section 234E.
- The ITAT concluded that the Commissioner (Appeals) cannot travel beyond the subject matter of the appeal and he had to decide whether fee under section 234E can be levied or not; and not whether the return of TDS filed by the assessee is valid or non-est in law. The ITAT concluded that the order of the Commissioner (Appeals) to this extent was held to be bad in law.