

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1039/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

Mrs. Anitha Bhatt,  
C/o Shri S. Sridhar, Advocate,  
112/1, Periyar Street,  
Erode – 638 001.

PAN : AIXPB 0061 F  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1040/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

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

PAN : AERPK 9539 F  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.1041/Mds/2015

निर्धारण वर्ष / Assessment Year : 2013-14

M/s The Salem Urban Co-op.  
Bank Limited,  
C/o Shri S. Sridhar, Advocate,  
112/1, Periyar Street,  
Erode – 638 001.

PAN : AABAT 9761 B  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.1042/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Shree Shakthi Vinayagar  
Weaves Pvt. 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 Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

PAN : AAJCS 8948 K  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1043 & 1044/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

Shri C. Sekaran,  
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 Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

PAN : AIJPS 2988 J  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1045 & 1046/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Anithaa Weaving Mill (P)  
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 Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

PAN : AAFCA 5624 G  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1047, 1048 & 1049/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Dinesh Exports,  
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 Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

PAN : AADFD 9542 R  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1050, 1051 & 1052/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

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

PAN : AAOFM 3244 J  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1053, 1054 & 1055/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

M/s Handlooms Fashions,  
11/108, Seerangan Street,  
No.5, Sangeevrayan Pet,  
Salem – 636 006.

PAN : AABFH 5815 M  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1056, 1057 & 1058/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

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

PAN : AVGPS 8098 H  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA No.1059/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2014-15

M/s M. Ganesan & Co.,  
1, Ulipuram,  
Gengavalli – 638 118.

PAN : AAEFM 0748 B  
(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.  
(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1060 & 1061/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

M/s J.V. Agro (P) Ltd.,  
279, Sandaipet Main Road,  
Shevapet, Salem – 636 002.

PAN : AACCCJ 0319 A

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

(प्रत्यर्थी/Respondent)

**आयकर अपील सं./ITA Nos.1062 & 1063/Mds/2015**

निर्धारण वर्ष / Assessment Year : 2013-14

Shri R. Sivaprakash,  
2<sup>nd</sup> Cross, 1<sup>st</sup> Sengunthapuram,  
Pallipalayam – 638 006.

PAN : ALYPS 2687 N

(अपीलार्थी/Appellant)

v. The Deputy Commissioner of  
Income Tax,  
CPC-TDS, TDS CPC,  
Aaykar Bhawan,  
Sector 3, Vaishali, Ghaziabad,  
Uttar Pradesh – 201 010.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellants by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 20.07.2015

घोषणा की तारीख/Date of Pronouncement : 07.08.2015

**आदेश /O R D E R****PER N.R.S. GANESAN, JUDICIAL MEMBER:**

These appeals filed by 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 in all these appeals 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 assessee under Section 200A of the Act.

3. We heard the Ld.counsel for the assessee and the Ld. Departmental Representative. The only contention of the Ld. D.R. is that Section 234E of the Act was introduced with effect from 01.07.2012 which enables the Assessing Officer to levy fee when the assessee fails to deliver the statement within the time prescribed under Section 200(3) of the Act.

4. After considering the rival submissions on either side, we find that this Tribunal had an occasion to examine the issue elaborately in *M/s Neelagiris Textiles v. DCIT* in I.T.A. Nos.795 to 797/Mds/2015 dated 10.07.2015. This Tribunal found that prior to 01.06.2015, the Assessing Officer had no power to make adjustment by levying fee under Section 234E of the Act. This Tribunal has also found that Section 200A of the Act was amended by Finance Act, 2015 with effect from 01.06.2015 enabling the Assessing Officer to make adjustment levying fee under Section 234E of the Act. Accordingly, this Tribunal found that the Assessing Officer cannot levy fee while making the adjustments under Section

200A of the Act in respect of statement filed by the assessee. In fact, this Tribunal has observed as follows in Neelagiris Textiles (supra) as follows:-

“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 1<sup>st</sup> 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 assessee, 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.”

4. By following the above order of the co-ordinate Bench of this Tribunal for the reasons stated therein, the order of the lower authorities are set aside.

5. In the result, all the appeals of the assesseees are allowed.

Order pronounced on 7<sup>th</sup> August, 2015 at Chennai.

sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 7<sup>th</sup> August, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Salem
4. आयकर आयुक्त/CIT, TDS, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.