

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
AHMEDABAD SMC BENCH, AHMEDABAD**

**[Coram: Pramod Kumar AM]**

I.T.A. Nos.3226 & 3227/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Bhilad Branch)** .....**Appellant**  
*Bhilad Branch,  
Vrundavan Building,  
Bhilad – 396 105  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3228 & 3229/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Umbergaon Town)** .....**Appellant**  
*Umbergaon Town Branch,  
Shri Gopal Krupa,  
Umbergaon – 396 170  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3230 & 3231/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Gundlav Town)** .....**Appellant**  
*Gundlav Branch,  
Plot No.124/1-A Ind. Estate,  
Gundlav – 396 035.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3232 & 3233/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Atgam Branch)** .....**Appellant**  
*Atgam Branch,  
Atgam – 396 045.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3234, 3235 & 3236/Ahd/2016  
Assessment Years: 2013-14, 2014-15 & 2015-16

**State Bank of India (Kaprada Branch)** .....**Appellant**  
*Kaprada Branch,  
Bazar Kaprada  
Kaprada – 396 126.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3237 & 3238/Ahd/2016  
Assessment Years: 2014-15 & 2015-16

**State Bank of India (Dungri Branch)** .....**Appellant**  
*Dungri Branch,  
Near Railway Station,  
Dungri – 396 020.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3239 & 3240/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Chanvi Branch)** .....**Appellant**  
*Chanvi Branch,  
Desai Falia Via Atul,  
Chanvi – 396 020. Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3241, 3242 & 3243/Ahd/2016  
Assessment Years: 2013-14, 2014-15 & 2015-16

**State Bank of India (Dehgam Branch)**

.....**Appellant**

*Dehgam Branch,  
Dehgam – 396 060.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3244 & 3245/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Nanapondha Branch)**

.....**Appellant**

*Nanapondha Branch,  
Okit BI 910 Luhar Falia,  
Nanapondha – 396 126.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3246 & 3247/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (RBO Branch)**

.....**Appellant**

*RBO Branch,  
Regional Business Office,  
Valsad – 396 001.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3248 & 3249/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Nani Daman Branch)** .....**Appellant**  
*Nani Daman Branch,  
Kavi Khabardar Road,  
Nani Daman – 396 210.  
Dist. Daman  
Daman And Diu.  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3250 & 3251/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Waghai Branch)** .....**Appellant**  
*Waghai Branch,  
1<sup>st</sup> Floor APMC Market,  
Waghai – 396 105.  
Dist. Valsad (Gujarat).  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3252 & 3253/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Bhadeli Branch)** .....**Appellant**  
*Bhadeli Branch,  
Bhadeli,  
Dist. Valsad (Gujarat).  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

I.T.A. Nos.3254 & 3255/Ahd/2016  
Assessment Years: 2013-14 & 2015-16

**State Bank of India (Udwada R.S. Branch)** .....**Appellant**  
*Udwada R.S.Branch,  
Dist. Valsad (Gujarat).  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3256 & 3257/Ahd/2016  
Assessment Years: 2014-15 & 2015-16

**State Bank of India (Dadra Branch)**

.....**Appellant**

*Dadra Branch,  
Ras Avenue,  
Opp. Lee Royal Hotel,  
Near Dadra Garden,  
Dadra – 396 193.  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3258, 3259 & 3260/Ahd/2016  
Assessment Years: 2013-14, 2014-15 & 2015-16

**State Bank of India (Dharampur Branch)**

.....**Appellant**

*Dharampur Branch,  
Jail Road,  
Dharampur – 396 050.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3261 & 3262/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Magod Branch)**

.....**Appellant**

*Magod Branch,  
Magod Mandir,  
Magod – 396 020.  
Dist. Valsad (Gujarat).  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.**

.....**Respondent**

I.T.A. Nos.3263 & 3264/Ahd/2016  
Assessment Years: 2013-14 & 2014-15

**State Bank of India (Umbergaon GIDC)** .....**Appellant**  
*Umbergaon GIDC Branch,  
Plot No.210 GIDC Estate,  
Umbergaon – 396 171  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

I.T.A. Nos.3265, 3266 & 3267/Ahd/2016  
Assessment Years: 2013-14, 2014-15 & 2015-16

**State Bank of India (Sarigam Branch)** .....**Appellant**  
*Sarigam Branch,  
Brahmin Street,  
Chanvi – 396 155.  
Dist. Valsad (Gujarat)  
[PAN: AAACS 8577 K]*

Vs

**Assistant Commissioner of Income Tax,  
CPC, Ghaziabad.** .....**Respondent**

**Appearances by:**

**Gaurang Barot** for the appellants  
**Mudit Nagpal** for the respondent

Date of concluding the hearing: 04.07.2017  
Date of pronouncing the order: 05.07.2017

**O R D E R**

1. These 42 appeals involve a common issue arising out of similar facts and were heard together. As a matter of convenience, therefore, all these appeals are being disposed of by way of this common order.

2. The orders impugned in these appeals are as follows :-

<b>ITA No.</b>	<b>A.Y.</b>	<b>Order passed by</b>	<b>Dated</b>
3226/Ahd/2016	2013-14	CIT(A), Valsad	15.04.2016
3227/Ahd/2016	2014-15	- do -	- do -
3228/Ahd/2016	2013-14	- do -	- do -
3229/Ahd/2016	2014-15	- do -	- do -
3230/Ahd/2016	2013-14	- do -	- do -
3231/Ahd/2016	2014-15	- do -	- do -

3232/Ahd/2016	2013-14	- do -	- do -
3233/Ahd/2016	2014-15	- do -	- do -
3234/Ahd/2016	2013-14	- do -	- do -
3235/Ahd/2016	2014-15	- do -	- do -
3236/Ahd/2016	2015-16	- do -	- do -
3237/Ahd/2016	2014-15	- do -	- do -
3238/Ahd/2016	2015-16	- do -	- do -
3239/Ahd/2016	2013-14	- do -	- do -
3240/Ahd/2016	2014-15	- do -	- do -
3241/Ahd/2016	2013-14	- do -	- do -
3242/Ahd/2016	2014-15	- do -	- do -
3243/Ahd/2016	2015-16	- do -	- do -
3244/Ahd/2016	2013-14	- do -	- do -
3245/Ahd/2016	2014-15	- do -	- do -
3246/Ahd/2016	2013-14	- do -	- do -
3247/Ahd/2016	2014-15	- do -	- do -
3248/Ahd/2016	2013-14	- do -	- do -
3249/Ahd/2016	2014-15	- do -	- do -
3250/Ahd/2016	2013-14	- do -	- do -
3251/Ahd/2016	2014-15	- do -	- do -
3252/Ahd/2016	2013-14	- do -	- do -
3253/Ahd/2016	2014-15	- do -	- do -
3254/Ahd/2016	2013-14	- do -	- do -
3255/Ahd/2016	2015-16	- do -	- do -
3256/Ahd/2016	2014-15	- do -	- do -
3257/Ahd/2016	2015-16	- do -	- do -
3258/Ahd/2016	2013-14	- do -	- do -
3259/Ahd/2016	2014-15	- do -	- do -
3260/Ahd/2016	2015-16	- do -	- do -
3261/Ahd/2016	2013-14	- do -	- do -
3262/Ahd/2016	2014-15	- do -	- do -
3263/Ahd/2016	2013-14	- do -	- do -
3264/Ahd/2016	2014-15	- do -	- do -
3265/Ahd/2016	2013-14	- do -	- do -
3266/Ahd/2016	2014-15	- do -	- do -
3267/Ahd/2016	2015-16	- do -	- do -

3. The common grievance in the impugned appeals is against (i) the learned CIT(A) not condoning the delay and proceeding to dismiss the appeals summarily; and (ii) against learned CIT(A) not holding that the impugned levy of fees under section 234E of the Income Tax Act, 1961, by way of intimation under section 200A was bad in law and liable to be quashed.

4. The appeals before me are time bared by 119 days. The assesseees have moved petition seeking condonation of delay. It is stated that the process for filing appeal required approval of the higher authorities since taxation matters are not dealt by the assesseees at branch level, and the impugned orders levying fee under section 234E of the Act were passed on assesseees, which are branches of a nationalised bank. It is also submitted that the delay was caused in internal processing since it was for the first time that the assessee branches are dealing with tax appeals. The assessee has submitted that the delay is unintentional, on account of factors beyond the control of the assessee branches, and was mainly on account of the fact that at branch level the matters regarding taxation and appellate procedures are not dealt with. It is prayed that the delay be condoned and the matter be decided on merits. The assessee further submits that the assessee has a strong *prima facie* case inasmuch as the issue in appeal is directly covered by several decisions of Division Benches of this Tribunal including the case of Sibia Healthcare Private Limited vs. DCIT [(2015) 46 ITR (Trib) 453 (Asr)].

5. Learned Departmental Representative does not vehemently oppose the application for condonation of delay but submits that my condoning this kind of laxity on the part of the assessee will only be incentivizing carelessness.

6. Having considered the rival contentions and having perused the material on record, I am inclined to condone the delay, since beyond controversy the branches of the nationalised banks, which are appellants before me, are not conversant with the appellate procedures and are totally dependent on approval and guidelines of their higher offices. I condone the delay and proceed to take up these appeals on merits.

7. Briefly stated, the relevant material facts are like this. There is admittedly delay in filing of TDS returns by the assesseees and it is for this delay that the Assessing Officer has levied fee under section 234E of the Act by way of intimation under section 200A. The matter was taken up in appeal and it was explained by the assesseees that section 200A, as it stood at the relevant point of time, did not permit levy of fee under section 234E and, therefore, the fee so levied in the course of processing of return under section 200A is bad in law. When this pleas were raised by the assesseees before the learned CIT(A), the learned CIT(A) declined to deal with the matter on merits since the appeals before the learned CIT(A) were delayed and the learned CIT(A) did not find it appropriate to condone the delay. In the impugned orders, the learned CIT(A) has dismissed the appeals as time barred without adjudicating on merits. The assesseees are aggrieved and are in appeal before the Tribunal.

8. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

9. Given the fact that, as I have noted earlier also, the taxation and appellate matters are not routinely dealt by the branches of nationalised banks and given facts that it was in one off situation being handled by the branches, in my considered opinion, the learned CIT(A) ought to have taken lenient view of the matter and condoned the delay in filing these appeals. It is also important to bear in mind the fact that the assessee had a strong *prima facie* case and the matter was said to be covered by a series of orders passed by the Tribunal. The explanation of the assessee was justified, reasonable and bonafide. In these circumstances, I deem it fit and proper to vacate the stand of the learned First Appellate Authority in the impugned orders and hold that

appeals should have been disposed of on merits. As far as merits of the cases are concerned, as rightly pointed out by the learned Counsel, the issue is squarely covered in favour of the assessee by a large number of decisions of this Tribunal including *Sibia Healthcare Private Limited vs. DCIT (supra)*, where the Tribunal has, *inter alia*, observed as follows :-

*“4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. In addition to his argument on the merits, learned counsel has also invited our attention to the reports about the decisions of various Hon’ble High Courts, including Hon’ble Kerala High Court, in the case of Narath Mapila LP School Vs Union of India [WP (C) 31498/2013(J)], Hon’ble Karanataka High Court in the case of Adithya Bazor P Solutions Vs Union of India [WP No. 6918-6938/2014(T-IT)], Hon’ble Rajasthan High Court in the case of Om Prakash Dhoot Vs Union of India [WP No. 1981 of 2014] and of Hon’ble Bombay High Court in the case of Rashmikant Kundalia Vs Union of India [WP No. 771 of 2014], granting stay on the demands raised in respect of fees under section 234E. The full text of these decisions were not produced before us. However, as admittedly there are no orders from the Hon’ble Courts above retraining us from our adjudication on merits in respect of the issues in this appeal, and as, in our humble understanding, this appeal requires adjudication on a very short legal issue, within a narrow compass of material facts, we are proceeding to dispose of this appeal on merits.*

5. We may produce, for ready reference, section 234E of the Act, which was inserted by the Finance Act 2012 and was brought into effect from 1st July 2012. This statutory provision is as follows:

**234E. Fee for defaults in furnishing statements**

**(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to subsection (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.**

**(2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.**

**(3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.**

**(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3)**

**of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012.**

6. We may also reproduce the Section 200A which was inserted by the Finance Act 2009 with effect from 1st April 2010. This statutory provision, as it stood at the relevant point of time, was as follows:

**200A: Processing of statements of tax deducted at source**

**(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 subsection.**

7. By way of Finance Act 2015, and with effect from 1st June 2015, there is an amendment in Section 200A and this amendment, as stated in the Finance Act 2015, is as follows:

**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.**

8. In effect thus, post 1st June 2015, in the course of processing of a TDS statement and issuance of intimation under section 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”**. There is no dispute that what is impugned in appeal before us is the intimation under section 200A of the Act, as stated in so many words in the impugned intimation itself, and, as the law stood, prior to 1st June 2015, there was no enabling provision therein for raising a demand in respect of levy of fees under section 234E. While examining the correctness of the intimation under section 200A, we have to be guided by the limited mandate of Section 200A, which, at the relevant point of time, permitted computation of amount recoverable from, or payable to, the tax deductor after making the following adjustments:

(a). after making adjustment on account of “arithmetical errors” and “incorrect claims apparent from any information in the statement”

- **Section 200A(1)(a)**

(b). after making adjustment for “interest, if any, computed on the basis of sums deductible as computed in the statement”.

- **Section 200A(1)(b)**

9. *No other adjustments in the amount refundable to, or recoverable from, the tax deductor, were permissible in accordance with the law as it existed at that point of time.*

10. *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(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. The assessee gets the relief accordingly.”*

10. Respectfully following the stand so taken by the Tribunal in the above case, I hold that the levy of fee under section 234E in the course of processing under section 200A was indeed bad in law. I, therefore, vacate the orders of the authorities below, and the levy of fees under section 234E in processing under section 200A thus stands deleted. The assessees get the relief accordingly.

11. In the result, all these appeals are allowed. Pronounced in the open court today on the 5<sup>th</sup> day of July, 2017.

Sd/-  
**Pramod Kumar**  
(Accountant Member)

**Dated: Ahmedabad, the 5<sup>th</sup> day of July, 2017.**

*Copies to:*

(1) *The appellant*  
(3) *CIT*  
(5) *DR*

(2) *The respondent*  
(4) *CIT(A)*  
(6) *Guard File*

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*