

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM
SHRI S.S. VISWANETHRA RAVI, JM

Sl. No.	ITA No.	Name of the Appellant	Name of Respondent	Asst. Year	Quarter	Form
1-10	2008/PUN/2017 to 2017/PUN/2017	C & M Farming Ltd., 2, C & M House, N.D. Patel Road, Nashik - 422 001. PAN: AAACC0473C	ACIT (CPS-TDS), Ghaziabad.	2013-14 2014-15 2014-15 2014-15 2014-15 2015-16 2015-16 2015-16 2015-16 2015-16	Qr-4 Qr-1 Qr-2 Qr-3 Qr-4 Qr-1 Qr-2 Qr-3 Qr-4 Qr-4	24Q 24Q 24Q 24Q 24Q 24Q 24Q 24Q 24Q 24Q 27EQ

Assessee by : Shri Kishore Phadke.
Revenue by : Shri Pankaj Garg.

सुनवाई की तारीख / Date of Hearing : 05.11.2019
घोषणा की तारीख / Date of Pronouncement : 06.11.2019

आदेश / ORDER

PER BENCH :

All these ten appeals are filed by the assessee against a common order dated 30.06.2017 passed by CIT(A)-3, Nashik for A.Ys. 2013-14 to 2015-16.

2. Shri Kishore Phadke, Ld.A.R. submits that the assessee raised additional ground of appeal and prayed to take up the same as preliminary issue. Ld. D.R. Shri Pankaj Garg, reported no objection in taking up additional ground raised by the assessee as preliminary issue.

3. We find the assessee raised similar additional ground in all the appeals above on same identical facts except variance in amounts and therefore with the consent of both the parties, proceed to adjudicate the additional ground raised by the assessee in ITA No.2008/PUN/2017 as lead case and pass consolidated order for the sake of convenience.

4. The issue raised in additional ground is to whether the CIT(A) justified in confirming late fee imposed in Q4-24Q for A.Y. 2013-14 u/s 200A r.w. 234E of the Act in the facts and circumstances of the case.

5. We shall take up the appeal in ITA.No.2008/PUN/2017.

6. Brief facts emanating from the record, that the assessee is a company engaged in the business of Poultry Farming and filed its TDS Quarterly Statement of Quarter – 4 for A.Y. 2013-14 on 05.02.2014 with a delay of 266 days. According to ACIT(TDS-CPC), the assessee should have filed TDS Quarterly Statement on 15.05.2013 and accordingly imposed late fee u/s 234E of the Act. The CIT(A) confirmed the late fee in respect of 24Q-Q4.

7. The contention of Shri Kishore Phadke, the Ld.A.R. is that AO has no jurisdiction to charge late fee u/s 234E of the Act for the reason that there was no enabling procedure for computation of late fee u/s 200A of the Act concerning the year under consideration. Further, he submitted that the computation of late fee was inserted in the Finance Act w.e.f. 01.06.2015 and since the amendment is prospective in nature, the late fee imposed u/s 234E r.w. 200A of the Act is not maintainable in the present case. The Ld.A.R. placed reliance on the decision of the Tribunal in the case of

Medical Superintendent Rural Hospital, DOBI BK Vs. DCIT, CPC(TDS) reported in (2018) 100 taxmann.com 78 (Pune - Trib) and referred to Para Nos.15 & 16 and submitted that the demand of late fee is not maintainable even if the returns of the TDS were filed after 01.06.2015, the order charging late filing fee was passed after 01.06.2015. He argued that the factual circumstances are similar to the present case, the assessee filed TDS statements belatedly after 01.06.2015 and the ACIT, (CPS-TDS) charged late fee u/s 234E of the Act after 01.06.2015. The Ld. D.R. did not controvert the same.

8. Heard both sides and perused the material available on record. We find the issue raised in the present appeal is similar to the issue raised by the Co-ordinate Bench of the Tribunal in the case of *Medical Superintendent Rural Hospital, DOBI BK(supra)*, wherein the co-ordinate Bench of the Tribunal held that charging of late fee u/s 234E of the Act is not maintainable even if the assessee files TDS returns belatedly and the Assessing Officer issues intimation u/s 200A of the Act after 01.06.2015 charging late filing fee u/s 234E of the Act. Therefore, we find force in the arguments of Shri Kishore Phadke, Ld.A.R. and the imposition of late fee u/s 200A r.w 234E of the Act confirmed by Ld.CIT(A) is set aside. Thus, additional ground raised by the assessee is allowed.

9. Further, main grounds 1 to 5 raised in Form No.36 become academic and require no adjudication in view of our decision on additional ground in the formation para. Thus, the same are dismissed.

10. In the result, the appeal of assessee in ITA No.2008/PUN/2017 is allowed.

11. Now, we shall take up ITA Nos.2009 to 2017/PUN/2017.

12. Since the additional ground raised in all these appeals are similar to the additional ground raised in ITA No.2008/PUN/2017 and since we decided the additional ground in favour of the assessee and the same is equally applicable in ITA Nos.2009 to 2017/PUN/2017. Thus, the additional ground raised by the assessee in all the appeals above are allowed.

13. In the result, all the appeals of assessee are allowed.

Order pronounced on 6th day of November, 2019.

Sd/-

**(D. KARNUKARA RAO)
ACCOUNTANT MEMBER**

Sd/-

**(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 6th November, 2019.

Yamini

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-3, Nashik.
4. CIT(TDS), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी"/ DR,
ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.