

आयकर अपीलिय अधिकरण न्यायपीठ, नागपुर में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

Sl. No.	ITA No(s).	Name of the Applicant	Name of Respondent	Asst. Year	Quarter	Form
1	208/NAG/2019	M/s. Rajyas Software Pvt. Ltd., P.No.92, Bante Layout, Somalwada, Nagpur – 440025  PAN: AAGCR2639K	ACIT, CPC-TDS, Ghaziabad	2014-15	Q4	26Q
2-12	209/NAG/2019 To 219/NAG/2019	M/s. Champak Mines and Minerals Shop No.19, Upper Ground Floor, Dhanshree Complex, Nagji Bhai Town, Dr. Munje Mar Sitabuldi, Nagpur – 440012  PAN: AAHFC2383D	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2013-14 2014-15 2014-15 2014-15 2014-15 2014-15 2015-16 2015-16 2015-16 2015-16	Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4	26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q
13-16	220/NAG/2019 To 223/NAG/2019	M/s. Tayani Minerals Pvt. Ltd., P.No.159, Shree Mangal, Ramdaspath, Nagpur – 440012  PAN: AAGCA0709H	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2013-14 2014-15	Q2 Q3 Q4 Q3	26Q 26Q 26Q 26Q
17-26	224/NAG/2019 To 233/NAG/2019	M/s. Padgilwar Agro Industries 192, Central Avenue Road, Wardhaman Nagar, Nagpur – 440008  PAN: AACFP0324Q	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2013-14 2014-15 2014-15 2014-15 2014-15 2014-15 2015-16 2015-16 2015-16	Q2 Q3 Q4 Q1 Q2 Q3 Q4 Q1 Q2 Q3	26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q
27-28	246/NAG/2019 And 247/NAG/2019	M/s. Minor Irrigation (ZP) Sub Division Pauni Panchayat Samiti Pauni, Bhandara – 441910  TAN: NGPMO4483D	ACIT, CPC-TDS, Ghaziabad	2014-15 2014-15	Q1 Q2	24Q 24Q



				2014-15 2014-15 2014-15 2014-15 2015-16 2015-16 2015-16 2015-16	Q1 Q2 Q3 Q4 Q1 Q2 Q3 Q4	26Q 26Q 26Q 26Q 26Q 26Q 26Q 26Q
91	350/NAG/2019	Sharad Narayan Jichkar TC 1/21, CTPS Colony, Chandrapur-442502  PAN: ABFPJ9122Q	ACIT, CPC-TDS, Ghaziabad	2013-14	Q4	26Q
92-95	371/NAG/2019 To 374/NAG/2019	M/s. Maharashtra Panchayat Samiti, Bhandara – 441904  TAN: NGPMO3909D	ACIT, CPC-TDS, Ghaziabad	2015-16 2015-16 2015-16 2015-16	Q1 Q2 Q3 Q4	24Q 24Q 24Q 24Q
96-99	376/NAG/2019 To 379/NAG/2019	M/s. Shree Omtee Steel Pvt. Ltd., Plot No.C-4, MIDC, Tadali, Chandrapur-442406  PAN: AANCS1907N	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2014-15 2014-15	Q4 Q4 Q4 Q4	24Q 26Q 24Q 26Q
100-103	380/NAG/2019 To 383/NAG/2019	M/s. Shree Omtee Coal Pvt. Ltd., Flat No.8/2, Radha Nagar, C.H.S. Ltd., Barave Road, Khadakpada, Kalyan-421301  PAN: AAJCS7236C	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2013-14 2013-14	Q4 Q4 Q2 Q3	24Q 26Q 27EQ 27EQ
104-105	384/NAG/2019 And 385/NAG/2019	M/s. PRB Infraprojects Pvt. Ltd. 5-3, 2 <sup>nd</sup> Floor, Ratan Height, Medical Square, Nagpur – 440012  PAN: AAFCP9495A	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14	Q4 Q4	26Q 24Q
106-111	01/NAG/2020 To 06/NAG/2020	Mr. Uttam Singh Rauthan 14, Venuwan SOC, Kolba Swami Nagar, Friends Colony, Nagpur – 440013  PAN: AGLPR8164M	ACIT, CPC-TDS, Ghaziabad	2013-14 2013-14 2014-15 2015-16 2015-16 2015-16	Q4 Q4 Q4 Q1 Q2 Q4	24Q 26Q 26Q 26Q 26Q 26Q

Assessee by : Shri Mahavir Atal &  
Ms. Alfiya Rozie

Revenue by : Shri U. U. Kasar

सुनवाई की तारीख / Date of Hearing : 31.01.2020

घोषणा की तारीख / Date of Pronouncement : 31.01.2020

### आदेश / ORDER

#### PER BENCH :

This bunch of **111 appeals** preferred by the different assessees, emanates from the respective orders of the Ld. CIT (Appeals) for the respective assessment years captioned hereinabove. These cases were heard together due to commonness of the facts and issues. These cases are being disposed of in this consolidated order. For the sake of convenience, the facts, figures and the grounds for the assessee is considered. The ground for the said assessee (M/s. Vishwas Power Engineering Services Pvt. Ltd.) is extracted as under :-

*“1. Whether on the facts and circumstances of the case learned CIT(A) erred in confirming fees levied U/S 234E by the Assessing Officer.”*

#### **A. Preliminary Issue - Condonation of Delay**

2. At the very outset, we notice that some of the appeals are time barred by **3 days**. The assessee filed an affidavit along with condonation of delay petition. We have gone through the condonation petition as well as the affidavit and have found that reasons specified therein are justified and that the delay cannot be attributed to the deliberate conduct of the assessee neither through intention nor through action. The reasons for delay in filing the appeals late were beyond the control of the assessee and even the Ld. DR

stated that he has no objection, if the delay is condoned. In view of the matter, we condone the delay and proceed to hear the appeals on merits.

### **B. Merits of the Issue**

3. In this set of appeals, the intimation had been issued by the Assessing Officer u/s 200A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') wherein, the late filing fees payable u/s 234E of the Act was charged by the Assessing Officer.

4. Before us, the Ld. AR of the assessee submitted that in respect of all these cases, it may be noted that the Legislature had inserted Clause (c) to Section 200A(1) of the Act specifically w.e.f. 01.06.2015 and the case of the assessee before us is that in such circumstances where the said amendment was introduced w.e.f 01.06.2015 and there was nothing to suggest that the said amendment was clarificatory or retrospective in nature, then no such late filing fees could be charged u/s 234E of the Act in respect of TDS statements which were filed prior to 01.06.2015 or after the said date. Therefore, the Revenue Authorities could not have levied late filing fees u/s 234E of the Act.

5. *Per contra*, the Ld. DR for the Revenue submitted that in these set of appeals, the respective Ld. CIT (Appeals) had dismissed these appeals filed before them on the ground of substantial late filing fees of the appeals and without going into the merits of the cases.

6. We have heard both the sides on this issue of unavailability of enabling the provisions to the Assessing Officer for levy of late filing fees on the assessee in respect of defaults of non-filing of TDS statement for the period prior to 01.06.2015. It is undisputed fact that the provisions of section 234E

of the Act was originally brought into Statute w.e.f. 01.7.2012 by the Finance Act, 2012. However, the un-amended provisions of section 200A of the Act were not to provide the powers to the officers to charge the late filing fees. In principle, the provisions of section 234E of the Act enables the officers for the procedure to levy late filing fees when the assessee failed to file the TDS statements under sub-section (3) of section 200 of the Act. There is no dispute about the fact on availability of enabling the provisions w.e.f. 01.06.2015 only. The Finance Act, 2015 provides for the amendment to section 200A of the Act enabling the Assessing Officers to levy late filing fee for default of late filing of TDS statements. There are huge amount of litigation on the issue i.e. if the Assessing Officer has power to levy the late filing fees when the assessee files the TDS statement for the quarters filing upto 01.06.2015. However, there is no dispute about the non-availability of such powers for the quarter related to the period later to 01.06.2015.

7. During the time of argument before us, on the issue of notice u/s 234E of the Act, which is different from the levy of fee at the time of processing of TDS statements, Mr. Atal, Id. Counsel, mentioned that the officers of the Department have started issuing notices independently under the provisions of section 234E of the Act and, for that, the Department relies on the decision of Chennai Bench of the Tribunal in the case of Smt. G. Indhirani vs. DCIT vide ITA Nos.1019 to 1021/Mds/2015 and others dated 10.07.2015. Referring to the contents of para 8 to 11 of the said decision in the case of Smt. G. Indhirani (supra) where the Tribunal obliquely referred to the availability of powers independently for collecting the said late filing fees in case of belated TDS statements, Id. Counsel mentioned that the said decision of the Tribunal (supra) was pronounced prior to the Hon'ble Karnataka High Court's judgement in the case of Fatheraj Singhvi (supra) and after the

judgement of the Hon'ble High Court, the decision of the Tribunal in the case of Smt. G. Indhirani (supra) is not a good law. It is the decision of the Hon'ble Karnataka High Court's judgment (supra) that the provisions of the amendment to section 200A r.w.s. 234E are prospective.

8. Further, ld. Counsel submitted that in the instance case, the late filing fees was levied u/s 234E of the Act at the time of **processing** of the TDS statements. The Assessing Officer never issued independent **notices u/s 234E** of the Act.

9. Ld. AR submitted that, at the time of processing of TDS statements, Assessing Officer is prevented from levy of fee for the default of late furnishing of TDS statement. He relied on various decisions in his support. Coming to the legal precedent on this issue. Relying on the decisions of Pune Bench of the Tribunal in the case Medical Superintendent Rural Hospital vs. DCIT vide ITA No.651/PUN/2018 and others dated 25.10.2018, in the case of C & M Farming Ltd. vs. ACIT vide ITA Nos.2008 to 2017/PUN/2017 dated 06.11.2019, ld. AR submitted that the Assessing Officer suffers from lack of jurisdictional power in respect of charging of late filing fee for the assessee's defaults for the period upto 01.06.2015, the date of amendment (supra). We have also held that the TDS statements furnished for the said period subsequent to 01.06.2015, the Assessing Officer compute late filing fee on the said belated TDS statements. This is a law so far as specific issue is concerned as on date. The relevant extract from the said judgements and other decisions are as follows.

**A. C & M Farming Ltd. (supra) :**

*"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.”

#### **B. Medical Superintendent Rural Hospital (supra) :**

“15. In other words, the Hon’ble High Court of Karnataka explained the position of charging of late filing fees under section 234E of the Act and the mechanism provided for computation of fees and failure for payment of fees under section 200A of the Act which was brought on Statute w.e.f. 01.06.2015. The said amendment was held to be prospective in nature and hence, notices issued under section 200A of the Act for computation and intimation for payment of late filing fees under section 234E of the Act relating to the period of tax deduction prior to 01.06.2015 were not maintainable and were set aside by the Hon’ble High Court. In view of said proposition being laid down by the Hon’ble High Court of Karnataka (supra), there is no merit in observations of CIT(A) that in the present case, where the returns of TDS were filed for each of the quarters after 1 st day of June, 2015 and even the order charging late filing fees was passed after June, 2015, then the same are maintainable, since the amendment had come into effect. The CIT(A) has overlooked the fact that notices under section 200A of the Act were issued for computing and charging late filing fees under section 234E of the Act for the period of tax deducted prior to 1st day of June, 2015. The same cannot be charged by issue of notices after 1st day of June, 2015 even where the returns were filed belatedly by the deductor after 1st June, 2015, where it clearly related to the period prior to 01.06.2015.

16. We hold that the issue raised in the present bunch of appeals is identical to the issue raised before the Tribunal in different bunches of appeals and since the amendment to section 200A of the Act was prospective in nature, the Assessing Officer while processing TDS returns / statements for the period prior to 01.06.2015 was not empowered to charge late filing fees under section 234E of the Act, even in cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after **June, 2015. Accordingly, we hold that intimation issued by Assessing Officer under section 200A of the Act in all the appeals does not stand and the demand raised by charging late filing fees under section 234E of the Act is not valid and the same is deleted.**”



**C. Fatheraj Singhvi vs. Union of India, 73 taxmann.com 252 (Karnataka-HC) dated 26.08.2016 :**

“24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come **into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015.** Hence, the demand notices under Section 200A by the respondent authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.”

**D. Alpha Electronics Pvt. Ltd. vs. ACIT vide ITA No.1450/PUN/2019 and others dated 13.12.2019**

“7. We have perused the case records and heard the rival contentions. We have also given considerable thought to the facts and circumstances involved in all these cases. It is observed on perusal of Section 200 sub section (3) r.u.s. 206C sub-section (3) proviso that when the assessee has deducted TDS, he has to deposit the amount in the Government account and after doing that he has to furnish the TDS statement before the Income Tax Authorities within the prescribed time limit. If there is late filing of those TDS statements then the Revenue Authorities may charge late filing fees u/s.234E of the Act. That however, this power the Legislature was provided to the Authorities by inserting Clause (c) to Section 200A(1) of the Act w.e.f. 01.06.2015. There are plethora of cases which decided this issue that if TDS statements were filed prior to 01.06.2015 then there cannot be any levy of late fees u/s.234E of the Act. That however, TDS statements filed after 01.06.2015 would attract the late filing fees as per Section 234E of the Act. We further observe that in these instant cases before us, in some of the cases, TDS statements were filed prior to 01.06.2015 while in some other cases, they were filed after 01.06.2015. This is the position on merits. That however, the Ld. CIT(Appeal)s in their respective orders has not dealt with the merits of these cases and has dismissed the appeals of the assessee on the ground that there is substantial delay in filing of these appeals and also for the reason that the reasonableness attributed to that delay could not be established by the assessee therein.

8. We find that the Hon<sup>ble</sup> Apex Court in the case of Anil Kumar Nehru Vs. ACIT (2018) 103 CCH 0231 ISCC has held that even if there is substantial delay in filing of appeals it can be condoned on the ground that it involves a question of law which goes into the root of the matter. In these set of appeals before us, **it pertains to a legal question whether late fees would be leviable on the assessee or not depending upon the merits involved in each case.**”

10. From the above extracts of the judgment of the Hon<sup>ble</sup> High Court as well as the Tribunal's order, where, we the undersigned are the party to a decision, we are of the opinion that it is settled issue that amendment

brought in by the Finance Act, 2015 w.e.f. 01.06.2015 to section 200A r.w.s. 234E of the Act is prospective and consequently, for all the defaults committed by the assessee for the quarters prior to 01.06.2015, in respect of the TDS statements are filed belatedly either before 01.06.2015 or 01.06.2015, the Assessing Officer has no jurisdiction to charge late filing fee at the time of processing of the TDS statements.

11. We have also noticed that Mr. Atal, Id. Counsel, common to all the 111 appeals, filed the statement giving specific details of quarters involved, due dates for the quarters and actual date of furnishing of statements. On perusal of the said statements, the date of quarters involved and the actual date of filing of the statements, we find that the financial years involved are F.Y. 2012-13, 2013-14 and 2014-15. Further, we also noticed that the actual date of filing of TDS statements belatedly predominantly happened before 01.06.2015 only. However, we find in some cases i.e. (i) Vishwas Power Engineering Services Pvt. Ltd.; (ii) Audarya Construction Pvt. Ltd.; (iii) Nagar Parishad Pauni; (iv) Uttam Singh Rauthan; (v) Champak Mines and Minerals; and, (vi) Maharashtra Panchayat Samiti Bhandara, the TDS statements were furnished belatedly i.e. after 01.06.2015. In any case, the defaults in all these quarters of 111 cases by the assessee occurred in the period before 01.06.2015. Therefore, in view of the precedents, the late filing fees charged by the Assessing Officer is unsustainable in law for want of jurisdiction.

12. Before parting the order, we direct the Assessing Officer to examine closely the facts, dates of defaults, claims of the assessee etc once again and ensure that the above law is correctly applied to the facts of the present set of 111 cases. In case, the default pertains to the period later to 01.06.2015, the provisions for late filing fees u/s 234E r.w.s. 200A of the Act attract. With these directions, all these 111 appeals are allowed *protanto*.

13. In the result, all the **111 appeals** preferred by the different assesseees are allowed.

Order pronounced in open Court on 31<sup>st</sup> day of January, 2020.

Sd/-  
**S.S. VISWANETHRA RAVI**  
**JUDICIAL MEMBER**

Sd/-  
**D. KARUNAKARA RAO**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 31<sup>st</sup> January, 2020.  
GCVSR/Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT(Appeals),
4. The concerned CIT.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर  
पुणे / DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//True Copy//

आदेशानुसार / BY ORDER,

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