

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

Sl. No.	ITA No.	Name of the Appellant	Name of the Respondent	Asst. Year	Quarter	Form
1-8	2018/PUN/2017 2019/PUN/2017 2020/PUN/2017 2021/PUN/2017 2022/PUN/2017 2023/PUN/2017 2024/PUN/2017 2025/PUN/2017	Marshall Breeders Pvt. Ltd. 1, C & M House, Behind GPO, N.D. Patel Road, Nashik-422001 PAN: AACCM9933F	The ACIT(CPC-TDS), Ghaziabad	2013-14 2014-15 2014-15 2014-15 2015-16 2015-16 2015-16 2015-16	Qr-4 Qr-2 Qr-4 Qr-4 Qr-1 Qr-2 Qr-3 Qr-4	24Q 26Q 24Q 26Q 24Q 24Q 24Q 24Q

Assessee by : Shri Kishor B. Phadke

Revenue by : Shri Shivanand H. Kalakeri

सुनवाई की तारीख / Date of Hearing : 06.07.2020

घोषणा की तारीख / Date of Pronouncement : 09.07.2020

**आदेश / ORDER**

**PER BENCH :**

These bunch of 8 appeals preferred by the common assessee emanates from the respective orders of the Ld. CIT(Appeal)'s for the respective assessment years captioned hereinabove and as per the grounds of appeal on record.

2. These cases were heard together. Since facts common and issues are similar, these cases are being disposed of vide this consolidated order.

3. In all these appeals, the assessee has raised additional ground as well as grounds of appeal on appeal memo. The Ld. AR of the assessee submitted that if the additional ground is decided in favour of the assessee, then grounds of appeal on appeal memo becomes academic in nature. The additional ground raised in all these appeals reads as follows:

*“The learned I-T Authorities erred in law and on facts in levying fee u/s.234E through an intimation u/s.200A of the ITA, 1961 for a period prior to 01/06/2015. The learned I-T Authorities ought to have appreciated that levy of fees u/s.234E of the ITA, 1961 was not permissible adjustment contemplated u/s.200A of the ITA, 1961 for the period prior to 01/06/2015.”*

For the sake of convenience, first we would take up ITA No.2018/PUN/2017, assessment year 2013-14 for adjudication as lead case.

**ITA No.2018/PUN/2017 (A.Y.2013-14)**  
**(Q4-24Q)**

4. The brief facts of the case are that the assessee filed its TDS quarterly statement of 24Q and 26Q for different quarters and therefore, it was delayed filing of TDS return which are as follows:

A.Y	Type of return	Date of original order of CPC	Date of order u/s.154	Amount (Rs.)
2013-14	24Q-2	26.12.2013	13.02.2016	53,420
2013-14	24Q-3	26.12.2013	13.02.2016	30,240
2013-14	24Q-4	21.11.2016	-----	53,680
2013-14	26Q-2	26.12.2013	13.02.2016	20,200
2013-14	26Q-3	26.12.2013	13.02.2016	8,060

The ACIT, CPC, Ghaziabad processed the return and sent intimation u/s.200A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The Assessing Officer had determined the late fee @ of Rs.200/- per day u/s.234E of the I.T. Act for delay in filing of quarterly TDS statement. In respect of returns of 24Q and 26Q for Q-2 and Q-3, the assessee filed rectifications as shown in column 4 of table above which was rejected by CPC.

5. The Ld. AR of the assessee further submitted that the issue raised in additional ground in all the appeals is squarely covered by the decision of the Raipur Bench of the Tribunal in **Chhattisgarh Rajya Gramin Bank & Ors. Vs. The Income Tax Officer, TDS, Bilaspur (CG) in ITA No.39/RPR/2017 & Ors. A.Y.2014-15 decided on 31.01.2019.**

6. The Ld. DR reported no objection in taking up the additional ground raised by the assessee as preliminary issue and fairly conceded to the submissions of the Ld. AR of the assessee regarding the issue being covered one by the decision of the Raipur Bench of the Tribunal (supra.).

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 this case. We find that this issue had come up for adjudication before us in the Raipur Bench of the Tribunal in a series of cases in **Chhattisgarh Rajya Gramin Bank & Ors. Vs. The Income Tax Officer, TDS, Bilaspur (CG) in ITA No.39/RPR/2017 & Ors. A.Y.2014-15 decided on 31.01.2019** wherein it was observed by the Tribunal as follows:

*“8. We have perused the case record and heard the rival contentions. We find that this issue had come up for adjudication before the Raipur*

*Bench in a series of cases from ITA Nos.117 to 120/RPR/2015, ITA Nos.88 & 89/RPR/2015, ITA Nos.100 & 101/RPR/2015, ITA Nos.96 & 97/RPR/2015, ITA No.79/RPR/2015, ITA Nos. 99 & 101/RPR/2016, ITA No.129/RPR/2016 and ITA No.130/RPR/2016 wherein it was observed by the Tribunal as follows:*

*“A division Bench of this Tribunal in the case of Sibia Healthcare Private Limited Vs. DCIT- ITA No.90/Asr/2015, vide order dated 9<sup>th</sup> June, 2015 (2015) 171 TTJ 145 (Asr) has decided this issue in favour of the assessee by inter alia holding 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 Bisor P Solutions Vs Union of India [WP No. 6918-6938/2014(T-IT), Hon’ble Rajasthan High Court in the case of Om Prakash DhootVs Union of India [WP No. 1981 of 2014] and of Hon’ble Bombay High Court in the case of Rashmikant KundaliaVs 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 1st 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 234E 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.”*

8. Thereafter, the decision of the Tribunal in that case is as follows:

*“4. When attention of the learned Departmental Representative was invited to the above judicial precedent, he fairly accepts that the issue is covered against the Revenue by the aforesaid judicial precedent. He however relied upon the stand of the authorities below. We see no reasons to take any other view of the matter than the view so taken by the co-ordinate Bench. Respectfully, following the same, we hold that the learned CIT(A) was indeed in error in upholding the levy of processing fees under section 234E by way of intimation under section 200A of the Act. We, therefore, quash the impugned demands. Assesseees get the relief accordingly.*

*5. In the result, all these appeals are allowed.”*

9. Further, the Co-ordinate Bench of the Tribunal, Jodhpur on the issue whether the order passed u/s.200A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) by the Assessing Officer and confirmed by the Ld. CIT(A) and creating demand for late filing of fees u/s.234E of the Act was justified or not, in the case of **Government Secondary School Vs. ACIT in ITA Nos. 57 to 60/Jodh/2017** has held as under :

*“4. After considering the rival submissions, perusing the relevant material on case record and carefully going through the paper book as well as the various decisions cited by the Ld. AR, we find that similar issue cropped up before us in the case of Rantam Granite Marbles Pvt. Ltd. and others vide ITA Nos. 419 to 423/Jodh/2016 for Assessment Years 2013-14 and 2014-15 order dated 18.05.2017 wherein we have held as under:*

“10. We have heard the rival submissions, perused the relevant material on record and have carefully gone through the paper book as well as the various decisions cited by the ld. AR. The only issue arising out of all these appears is as to at what point of time chargeability of levying fees can be done even prior to the amendment was effected i.e.1.06.2015. We observe that in the case of G. Indrani(supra.), the ITAT Chennai Bench has held that prior to 01.06.2015, there was no enabling provision of 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 Assessing Officer has exceeded his jurisdiction in levying fee u/s.234E of the Act while processing the statement and made adjustment u/s.200A of the Act which is not justified. Thus 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. Therefore, the Tribunal was 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 was beyond the scope of adjustment provided under section 200A of the Act and deleted the same the eye of law.

11. The Amritsar Bench of the Tribunal in the case of Sibia Healthcare (supra.) has opined that the matter in question was if the fees u/s.234E in respect of defaults in furnishing TDS statement could be levied in intimation u/s.200A of the Act so far as period prior to 1.06.2015 was concerned. It was held that the impugned levy of fee u/s.234E was unsustainable in law.

12. Similarly, the Ahmedabad Bench of the Tribunal in the case of Krishna Art Silk Cloth Pvt. Ltd. (supra.) held that in a case where the Assessing Officer had charged fees against the assessee u/s.234E of the Act for late filing of TDS which was confirmed by the Ld. CIT(A), it was held by the Co-ordinate Bench that TDS statement was failed on 19.2.2014, such a levy could only have been made at best within 31.03.2015. It was further held that time had already elapsed and defect was thus not curable even at this stage. Accordingly, the Tribunal holding that the impugned levy of fees u/s.234E was unsustainable in law, deleted the levy of late fee imposed u/s.234E of the Act.

**13. On the basis of the above judicial pronouncements which were placed before us, on perusal and analyzing the details , it is absolutely clear that prior to 1.6.2015, there was no enabling provision in section 200A of the Act for raising a demand in respect of levying fee u/s.234E of the Act. Therefore, we hold that the intimation u/s.200A of the Act as confirmed by the Ld. CIT so far as levying of fees u/s.234E of the Act is, therefore, set aside and the fees levied is deleted. Ground raised by the assessee is allowed.**

In view of the matter, respectfully following the aforesaid Co-ordinate Bench decisions, we set aside the order of the Ld. CIT(Appeal) and allow the appeal of the assessee herein.

10. Since, the additional ground is allowed; the remaining grounds raised in grounds of appeal on appeal memo becomes academic in nature, hence, requires no adjudication.

11. In the result, **appeal of the assessee in ITA No.2018/PUN/2017 is allowed.**

**ITA Nos.2019 to 2025/PUN/2017**  
**A.Ys.2014-15 & 2015-16**

12. In other appeals captioned hereinabove filed by the assesses, the facts and circumstances of the case are identical except the amounts. Since all other facts, arguments of the parties are same and similar, the same ruling as rendered in ITA No.2018/PUN/2017 shall apply ***mutatis-mutandis*** to other said appeals herein also. Therefore, for these cases also, we set aside the order of the Ld. CIT(Appeal) and allow the appeals of the assessee.

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

Order pronounced on 09<sup>th</sup> day of July, 2020.

Sd/-  
**R.S.SYAL**  
**VICE PRESIDENT**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 09<sup>th</sup> July, 2020.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-3, Nashik.
4. The CIT (TDS), Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	08.07.2020	Sr.PS/PS
2	Draft placed before author	08.07.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		