

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM

आयकर अपील सं./ITA Nos.05 to 11/CTK/2020

(AY:2010-2011)(4th Quarter) 26Q

(AY:2011-2012)(4th Quarter) 26Q

(AY:2012-2013)(4th Quarter) 26Q

(AY:2013-2014)(4th Quarter) 26Q

(AY:2014-2015) (2nd Quarter)26Q

(AY:2014-2015)(3rd Quarter) 26Q

(AY:2017-2018) (4th Quarter)26Q

Director of Physical Plant, OUAT Siripur, Bhubaneswar District : Khurda	Vs.	ACIT(CPC-TDS), Ghaziabad
TAN No. : BBND 00486 D		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	None
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing	:	14/10/2020
घोषणा की तारीख/Date of Pronouncement	:	16/10/2020

आदेश / ORDER

Per Bench:

The assessee has filed these seven appeals against the order of CIT(A)-1, Bhubaneswar, dated 22.10.2019 & 16.10.2019 for the A.Ys. 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 & 2017-2018, respectively

2. None appeared on behalf of the assessee even the case was called for second round of hearing. Applications dated 14.10.2020 have been

filed by the Id.AR of the assessee for adjournment, however, looking to the facts and circumstances of the case, we rejected the adjournment applications and proceeded to dispose off all the appeals of the assessee after considering the submissions of Id.DR and the material evidence available on record.

3. The sole issue involved in all the appeals is with regard to confirming the interest u/s.201(1A) of the Act along with interest charged u/s.220(2) of the Act by the CIT(A) and also levy of late filing fee u/s.234E of the Act in the appeals for A.Y. 2014-2015 for Quarters 2nd & 3rd. The details of fee levied in all the appeals are as under :-

ITA Nos.	A.Y.	Qtr	Interest levied u/s.201(1A) of the Act	Late filing fee levied u/s.234E of the Act	Interest levied u/s.220(2) of the Act	Total fee levied	Demand confirmed by the CIT(A)
05/CTK/20	2010-11	4	12,888/-	-	4,608/-	17,500/-	1,34,541/-
06/CTK/20	2011-12	4	1,19,071/-	-	15,470/-	1,34,541/-	1,34,541/-
07/CTK/20	2012-13	4	14,527/-	-	3,190/-	17,720/-	17,720/-
08/CTK/20	2013-14	4	7,311/-	-	3,334/-	10,650/-	10,650/-
09/CTK/20	2014-15	2	-	12,800/-	5,984/-	18,780/-	18,780/-
10/CTK/20	2014-15	3	-	17,200/-	8,084/-	25,284/-	25,284/-
11/CTK/20	2017-18	4	2,799/-	-	-	2,800/-	2,800/-

4. Since the issue in all the appeals, is identical, except different in figure, therefore, all the appeals are heard analogously and disposed off by this consolidated order. For the sake of convenience, we shall take into consideration the facts and grounds mentioned in ITA No.05/CTK/2020 for the assessment year 2011-2012 for deciding all the appeals and the outcome of the same shall be applied *mutatis mutandis* to the other appeals also.

5. Brief facts of the case are that the assessee is a Government of Odisha Organisation and remitted TDS amount for the respective quarters in the respective assessment years under consideration belatedly, on the basis of which the ACIT (TDS-CPC), Ghaziabad issued an intimation u/s.154 of the Act levying interest on late payment u/s.201(1) and 220(2) of the Act. Further, the ACIT(TDS-CPC) has also levied late fee u/s.234E of the Act for Quarter-2nd & 3rd (AY: 2014-2015). Aggrieved thereby, the assessee preferred appeal before the CIT(A) and the CIT(A) upheld the action of ACIT(TDS-CPC) and dismissed the appeals of the assessee.

6. None appeared on behalf of the assessee.

7. On the other hand, Id.DR relied on the orders of authorities below.

8. After hearing the submissions of Id. DR and perusing the entire material available on record and orders of authorities below, we find that the assessee is a Government of Odisha Organisation and due to delay in remittance of the TDS amount for the above quarters in the respective assessment years under consideration, the ACIT(TDS-CPC), Ghaziabad has levied late filing fee u/s.201(1A)/220(2) of the Act in the all appeals under consideration and the AO also levied late filing fee u/s.234E of the Act for the A.Y.2014-2015(Quarter-2nd &3rd), to which the CIT(A) in appeal has upheld the action of ACIT(TDS-CPC).

9. First of all, with regard to levy of late filing of TDS u/s.234E of the Act for the A.Y.2014-2015(Quarter-2nd &3rd), we are of the opinion that this issue is covered by the decision of coordinate bench of the Tribunal in the case of D.D.Motors Vs. DCIT(CPC-TDS) [2019] 111 taxmann.com 493 (Delhi-Trib) and the decision in the case of Govt. High School, Unit-6 Vs. ACIT(CPC-TDS), in ITA Nos.401-404/CTK/2019, order dated 25.02.2020, wherein it is held that prior to amendment of section 200A of the Act with effect from 1-6-2015, levy of late fee under section 234E for default in furnishing TDS statement could not be effected in course of intimation while processing TDS statement under section 200A of the Act. Therefore, the fee levied u/s.234E of the Act while processing the statement of tax deducted at source was beyond the scope provided under Section 200A of the Act. Accordingly, we respectfully follow the above decisions of the Tribunal and set aside the orders of lower authorities in this regard and delete the levy of late filing fee u/s.234E of the Act for the A.Y.2014-2015(Quarter-2nd &3rd).

10. With regard to interest charged u/s.201(1A) & 220(2) of the Act, on perusal of the order of CIT(A), we find that the assessee has explained for late filing of TDS, however, there is no deliberation on the submissions made by the assessee in this regard by the CIT(A) and the CIT(A) has only endorsed to the action taken by the ACIT(TDS-CPC). Looking to the facts of the case, we remit the issue involved in all the

appeals under consideration to the file of CIT(A) to pass a reasoned and speaking order after verification of the TDS payments as submitted by the assessee before him. The assessee is directed to appear before the CIT(A) along with the documents regarding payments made to the contractor with complete details i.e. amount of payment, date of payment, date of TDS deduction and date of TDS deposit along with copy of challan. The CIT(A) is also directed to consider the documents filed by the assessee and decide the issue as per law. Needless to say, the assessee shall be given reasonable opportunity of hearing and the assessee is also directed to cooperate with the CIT(A) for early disposal of the case. Further, on perusal of the order of the CIT(A) for A.Y.2010-2011 and the intimation u/s.154 of the Act, it is found that the CIT(A) has wrongly sustained Rs.1,34,541/- instead of Rs.17,500/-. As per the demand raised by the ACIT(TDS-CPC), Ghaziabad vide intimation u/s.154 of the Act, the interest on late payment u/s.201(1A) and interest charged u/s.220(2) of the Act is Rs.17,500/-. Therefore, the CIT(A) is directed to modify his order dated 22.10.2019 passed in I.T.Appeal No.0237/2018-19 for assessment year 2010-2011 accordingly. And, after rectification, the CIT(A) is directed to pass order in the terms of our above observations made for all the assessment years under consideration. We order accordingly.

11. In the result, appeals of the assessee in ITA No.05 to 08/CTK/2020 & ITA No.11/CTK/2020 are allowed for the statistical purposes and appeals of the assessee in ITA Nos.09&10/CTK/2020 are partly allowed for statistical purposes.

Order pronounced in the open court on 16/10/2020.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 16/10/2020

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Director of Physical Plant, OUAT
Siripur, Bhubaneswar
District : Khurda
2. प्रत्यर्थी / The Respondent-
ACIT(CPC-TDS), Ghaziabad
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack