

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA Nos.104 & 126/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Sihora Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC, TDS (Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.111,121 & 133/Nag./2022
(Assessment Years : 2013-14 & 2014-15)

Bank of India, Parsheoni Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC, TDS (Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.113 & 124/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Sawargaon Branch
Nagpur Zonal Office

..... Appellant

3rd Floor, CSD department
Kingsways
Nagpur-440 001

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.115/Nag./2022
(Assessment Year : 2013-14)

Bank of India, RTM Nagpur University
Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.118& 136/Nag./2022
(Assessment Years :2013-14 &2014-15)

Bank of India, Hingna Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.122/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Umred Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.138/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Bazar Chowk
Narkhed Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.112,117,120& 130/Nag./2022
(Assessment Years :2013-14 &2014-15)

Bank of India, Tumsar Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.114/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Takalghat Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.116& 119/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Ajnisquare Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.123,137& 152/Nag./2022
(Assessment Years : 2013-14,2014-15 & 2015-16)

Bank of India, Yenapur Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
 Uttar Pradesh-201 010

..... Respondent

ITA Nos.125& 146/Nag./2022
(Assessment Yeas : 2013-14 & 2014-15)

Bank of India, Bazar Chowk
 Narkhed Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
 Uttar Pradesh-201 010

..... Respondent

ITA No.127/Nag./2022
(Assessment Year : 2013-14)

Bank of India, MurmadiTupkar Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.128/Nag./2022
(Assessment Year : 2013-14)

Bank of India, Nagpur main Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.129/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Saoner Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.131& 143/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Katol Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
 Uttar Pradesh-201 010

..... Respondent

ITA No.132/Nag./2022
(Assessment Year : 2014-15)

Bank of India, SironchaChowk
 Narkhed Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
 Uttar Pradesh-201 010

..... Respondent

ITA No.134/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Bazargaon Branch
 Nagpur Zonal Office
 3rd Floor, CSD department
 Kingsways
 Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.135,141& 150/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Butibori Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA Nos.139,142& 151/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Kelwad Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.140/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Kalmeshwar Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.144/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Bhandara Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.145/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Kodamendhi Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways

..... Appellant

Nagpur-440 001

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.147/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Centralised Pension
Processing Centre Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.148/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Devalamati Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC,TDS(Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

ITA No.149/Nag./2022
(Assessment Year : 2014-15)

Bank of India, Mowar Branch
Nagpur Zonal Office
3rd Floor, CSD department
Kingsways
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

ACIT, CPC, TDS (Ghaziabad)
Uttar Pradesh-201 010

..... Respondent

Assessee by : Shri Hardik Chordia, CA & Shri Pratik Sadrani, CA
Revenue by : Shri Vitthal M. Bhosale, JCIT

Date of Hearing – 03.06.2022	Date of Order – 06.06.2022
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ORDER

PER BENCH:

These are appeals filed by Bank of India, the assessee, in respect of its forty three different branches spread across its zonal office in Nagpur against the respective orders of National Faceless Appeal Centre (NFAC), Delhi for Assessment Years 2013-14, 2014-15 & 2015-16. Since common issues are involved, all these appeals were heard together and are disposed off by this consolidated order.

2. At the outset, the Ld. AR fairly admitted that there has been a delay in filing the present appeals and the period of delay ranges from 110 days to 118 days. In this regard, it was submitted that the respective branches of the assessee's bank received the impugned orders during the period November, 2021 to April, 2022, which was a period, when third wave of COVID-19 pandemic was creating quite a difficulty in compiling data. It was submitted that the entire state of Maharashtra and the city of Nagpur was under lockdown conditions in the month of January, 2022 and due to this, there were challenges in proper communication and getting all the documents in place. It was submitted that the delay so happened in filing the present set of appeals is not deliberate. It was further submitted that another reason for such delay was the statutory bank audit for FY 2021-2022, which was also underway during said period, where the Branch Managers and another staff members were involved in completion of statutory audit besides regular functioning of the bank. It was further submitted that since the matter involved in all these appeals pertains to levy of late filing fee under section 234E, it was decided to wait for all the orders of the Ld.CIT(A) and thereafter to take steps in terms of filing further appeals before the Tribunal where required. It was submitted that considering the aforesaid facts and circumstances of the case, the delay in filing the present appeals was clearly not deliberate on the part of the assessee bank and drawing our reference to the decision of the Hon'ble Supreme Court in the case of

Collector, Land Acquisition v/s. MST Katiji and Others (1987) 167 ITR 471 (SC), wherein it was held that substantial justice should prevail over technical consideration, it was submitted that the delay so happened in filing the present set of appeals may be condoned and appeals filed by the assessee be heard on merits. It was further submitted that the present appeals pertains to a question of law, wherein the matter has been deliberated by various Hon'ble High Courts and relying on the Hon'ble Supreme Court decision in the case of Anil Kumar Nehru v/s. ACIT (2018) 103 CCH 0231 wherein it was held that even where there is a substantial delay in filing of appeal, the same can be condoned, where it involves a question of law, which goes into the root of the matter, it was submitted that considering the same, the present set of appeals may be admitted for adjudication on merits. Further, our reference was drawn to the Hon'ble Supreme Court decision in the matter of Re Cognizance For Extension of Limitation(Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in suo Motu Writ Petition (C) No. 3 of 2020 dated 10.01.2022), wherein the Hon'ble Supreme Court restored its earlier order to exclude period starting from 15.03.2020 till 28.02.2022 for the purposes of limitation prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings in view of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. It was accordingly submitted that in light of above submissions, the appeals

filed by the assessee may kindly be admitted and the delay so happened in filing the said appeals may be condoned.

3. Per contra, the ld. DR fairly submitted that in light of the Hon'ble Supreme Court decision, wherein the limitation period has been extended in view of the COVID-19 pandemic, the Revenue has no objection where the delay in filing the present set of appeals is condoned and the matter is heard on merits.

4. We have heard the rival contentions and perused the material available on record. Respectfully following the decision of the Hon'ble Supreme Court where the limitation period has been extended due to COVID-19 pandemic, the delay in filing the present set of appeals are hereby condoned and all the appeals are admitted for adjudication on merits.

5. Now coming to the merits of the case, in all these appeals, the assessee has challenged the levy of late filing fees under section 234E of the Act.

6. With the consent of both the parties, the case of the assessee in ITA No. 122/Nag/2022 was taken as a lead case for the purpose of present discussion. Briefly, the facts of the case are that the assessee

bank in respect of its Umred Branch having TAN No. NGPB03048D filed its TDS statement (Form 26Q) for Q4 of FY 2012-13 on 15.07.2013 as against the due date of 15.05.2013 leading to a delay of 61 days. The ACIT TDS -CPC processed the TDS statement and issued an intimation u/s 143(1) under dated 24.07.2013, wherein late filing fee of Rs.12,200/- was levied. Thereafter, the assessee received another intimation under section 154 dated 05.11.2020, wherein besides late filing fee of Rs 12,200/-, interest under section 220(2) amounting to Rs. 10,736/- was also levied on the assessee. The assessee did not file any appeal against the intimation under section 143(1). However, against the intimation under section 154, the assessee filed appeal before the ld CIT(A). The ld. CIT(A) has confirmed the levy of late filing fee under section 234E of the Act and has returned a finding that even in absence of amendment in section 200A, it was always open for the Revenue to make the levy under section 234E of the Act and the contention of the assessee bank that section 234E would not be applicable as the amendment to provisions of section 200A came into effect with effect from 01.06.2015 was rejected. It was held by the ld. CIT(A) that provisions of section 234E are applicable, since its insertion in 2012 and are applicable to the present FY 2012-13 and accordingly, late filing fee of Rs. 12,200/- levied by the Assessing Officer (CPC-TDS) under section 234E for the delay in filing the statement under section 26Q as well as interest u/s 220(2) was upheld. For arriving at such a finding, the ld.

CIT(A) relied on the decision of Hon'ble Gujarat High Court in the case of Rajesh Kourani v/s UOI (2017) 83 taxmann.com 137, decision of Hon'ble Bombay High Court decision in the case of Rashmikanth Kundalia v/s Union Of India (2015) 54 taxmann.com 200 and decision of Hon'ble Delhi High Court in Biswajit Das v/s. UOI 103 taxmann.com 290. Against the said findings and direction of the ld. CIT(A), the assessee is in appeal before us.

7. During the course of hearing, the ld. AR took us to the factual aspects and the relevant date of filing of the statement under section 26Q as well as the date of passing of the intimation, which we have already taken note of and are not under dispute. It was submitted that effective 01.06.2015, clauses (c) to (f) came to be substituted under section 200A providing that the fee under section. 234E can be computed at the time of processing of the return and the intimation could be issued specifying the same payable by the deductor as fee under section 234E of the Act. It was accordingly submitted that the said provisions have come into force effective 01.06.2015 and therefore, there was no authority or competence or for that matter jurisdiction on the part of the Assessing Officer to compute and the determine fee under section 234E in respect of assessment years and the statements filed prior to 01.06.2015. It was submitted that where there is no express authority conferred by the statute for computation of any fee under section. 234E and the

determination thereof, the demand or the intimation for the period prior to 01.06.2015 could not have been made by the Assessing officer. It was accordingly submitted that the intimation against the statements filed before 01.06.2015 levying late filing fee under section 234E deserves to be quashed. Further, our reference was specifically drawn to the CBDT circular No.19 of 2015 dated 27.11.2015, which was issued in the context of provisions introduced by the Finance Act, 2015 and our reference was drawn to paragraph 47.3 and 47.20 of the said circular, which reads as under:—

"47.3 Finance (No.2) Act, 2009 inserted section 200A in the Income-tax Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 243E was inserted after the insertion of section 200A of the Income-tax Act, the existing provisions of section 200A of the Income Tax Act did not provide for determination of fee payable under Section 234E of the Income Tax Act at the time of processing of TDS statements. Therefore, the provisions of Section 200A of the Income Tax Act has been amended so as to enable computation of fee payable under Section 234E of the Income Tax Act at the time of processing of TDS Statement under Section 200A of the Income Tax Act."

“47.20 Applicability: These amendments take effect from 1st June, 2015.”

8. It was submitted that in light of aforesaid CBDT Circular, it is clear that provisions of section 200A(1)(c) r.w.s. 234E have to be read prospectively w.e.f. 01.06.2015. In support, reliance was placed on the Co-ordinate Nagpur Benches decision in case of M/s. Rajyas Software Pvt Ltd. & others v/s ACIT (*in ITA No.208/Nag/2019 & others dated 31.01.2020*) and decision of Co-ordinate Pune Benches in case of Medical Superintendent Rural Hospital v/s DCIT (*in ITA No. 651/Pun/2018, dated 25.10.2018*).

9. It was further submitted that the issue is squarely covered by the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v/s Union of India 289 CTR 0602 as well as the subsequent decision of Hon'ble Kerala High Court in the case of Sarala Memorial Hospital v/s Union of India (*WP No. 37775/2018 dated 18.12.2018*). It was submitted that the Hon'ble Kerala High Court in case of Sarala Memorial Hospital (supra) has taken into consideration the decision of Hon'ble Gujarat High Court in case of Rajesh Kourani (supra) as well as Hon'ble Karnataka High Court decision in case of Fatheraj Sighvi (supra) and the aforesaid CBDT Circular No.19 of 2015 dated 27.11.2015 and has decided the matter stating that the amendment is prospective in nature.

10. It was further submitted that in case of Rashmikant Kundalia (supra), which has also been relied upon by the Id.CIT(A), the Hon'ble Bombay High Court has decided the matter relating to constitutional validity of section 234E. However, in the present set of appeals, the assessee is not challenging the constitutional validity of section 234E, which the assessee is in complete agreement with, however, the present set of appeals are limited to the fact that the amendment to section 200A w.e.f. 01.06.2015 has prospective effect and is not applicable for the period prior to 01.06.2015 and therefore, the levy of fee under section 234E for TDS returns filed pertaining to period prior to 01.06.2015 is without authority of law and therefore, deserve to be quashed.

11. It was further submitted that given the fact that there are three Different High Court's decisions on the issue of amendment to section 200A and whether the same should be read retrospective or prospectively, wherein the Hon'ble Karnataka High Court as well Hon'ble Kerala High Court are in favour of the assessee and Hon'ble Gujarat High Court is in favour of the Revenue, there is clearly a cleavage of opinion among these Hon'ble High Courts on the same issue and in light of Hon'ble Supreme court decision in case of CIT v/s Vegetable Products Ltd. 88 ITR 192 (SC) as well as CIT v/s Vatika Township P.Ltd. (2014) 367 ITR 466, the view in favor of the assessee needs to be followed. It

was submitted that similar view has been taken by the Co-ordinate Delhi Benches in case of Bathline India Pvt Ltd Delhi v/s ACIT (ITA Nos. 9336 to 9341/Del/2019 dated 31.08.2020).

12. It was accordingly submitted that since the present appeal and all the other appeals under consideration are in respect of late filing fee under section 234E for TDS statements filed pertaining to period prior to 01.06.2015, the impugned orders needs to be quashed considering the amendment in section 200A, which is effective from 01.06.2015. In this regard, our reference was drawn to the following table containing the requisite particulars in respect of the TDS statements filed by the respective branches of the assessee wherein the late fee u/s 234E has been levied while processing the TDS statements by the ACIT TDS-CPC and which has been confirmed by the ld CIT(A) and which are under challenge:

Name of Branch	TAN of Branch	FY	Qtr	Form	Amount	Date of Intimation (u/s 200A)	Date of Filing of Original TDS statement
Parsheoni Branch	NGPB01820A	2012-13	Q2	26Q	21200	24-Jul-13	29-Jan-13
Parsheoni Branch	NGPB01820A	2012-13	Q4	26Q	14600	26-Feb-14	27-Jul-13
Parsheoni Branch	NGPB01820A	2013-14	Q1	26Q	8000	3-Sep-13	24-Aug-13
Centralised Pension Procesing Center Branch	NGPB03386F	2013-14	Q4	24Q	6800	23-Jun-14	18-Jun-14
Umred Branch	NGPB03048D	2012-13	Q4	26Q	12200	24-Jul-13	15-Jul-13
RTM Nagpur University Branch	NGPB03116B	2012-13	Q2	26Q	7600	24-Jul-13	22-Nov-12
Bazar Chowk Narkhed Branch	NGPB03235B	2013-14	Q2	26Q	5754	31-Jan-14	15-Jan-14

Hingna Branch	NGPB03050F	2012-13	Q3	26Q	11320	24-Jul-13	29-Mar-13
Hingna Branch	NGPB03050F	2013-14	Q2	26Q	27200	16-Mar-14	28-Feb-14
Tumsar Branch	NGPB01669D	2012-13	Q2	26Q	7400	23-Jul-13	21-Nov-12
Tumsar Branch	NGPB01669D	2012-13	Q3	26Q	10200	23-Jul-13	7-Mar-13
Tumsar Branch	NGPB01669D	2012-13	Q4	26Q	13800	12-Sep-13	23-Jul-13
Tumsar Branch	NGPB01669D	2013-14	Q1	26Q	6400	31-Jan-14	16-Aug-13
Bhandara Branch	NGPB01677E	2013-14	Q3	26Q	7600	16-Mar-14	22-Feb-14
Sihora Branch	NGPB01976C	2012-13	Q2	26Q	7800	23-Jul-13	23-Nov-12
Sihora Branch	NGPB01976C	2012-13	Q4	26Q	21400	4-Sep-13	30-Aug-13
Murmadi Tupkar Branch	NGPB01751B	2012-13	Q4	24Q	14000	10-Feb-14	24-Jul-13
Armori Branch	NGPB01735G	2012-13	Q4	26Q	10000	24-Jul-13	4-Jul-13
Armori Branch	NGPB01735G	2013-14	Q3	26Q	11200	23-Mar-14	12-Mar-14
Sironcha Branch	NGPB01733E	2013-14	Q1	26Q	5200	24-Feb-14	10-Aug-13
Yenapur Branch	NGPB02084F	2012-13	Q4	26Q	14400	24-Feb-14	26-Jul-13
Yenapur Branch	NGPB02084F	2013-14	Q2	26Q	18800	24-Feb-14	17-Jan-14
Yenapur Branch	NGPB02084F	2014-15	Q2	26Q	13000	2-Jan-15	20-Dec-14
Nagpurmain Branch	NGPB01638A	2012-13	Q4	27Q	39200	2-Mar-14	27-Nov-13
Ajnisquare Branch	NGPB01664F	2012-13	Q2	24Q	5440	13-Nov-13	28-Aug-13
Ajnisquare Branch	NGPB01664F	2012-13	Q3	24Q	12300	25-Oct-14	22-Oct-14
Mowar Branch	NGPB01825F	2013-14	Q4	26Q	7188	21-Oct-14	15-Oct-14
Kalmeshwar Branch	NGPB00262D	2013-14	Q3	26Q	5800	16-Mar-14	13-Feb-14
Butibori Branch	NGPB01715A	2013-14	Q2	26Q	36600	19-Apr-14	16-Apr-14
Butibori Branch	NGPB01715A	2013-14	Q3	26Q	18200	19-Apr-14	16-Apr-14
Butibori Branch	NGPB01715A	2013-14	Q4	26Q	34000	12-Nov-14	1-Nov-14
Katol Branch	NGPB01585D	2013-14	Q1	26Q	11400	24-Feb-14	10-Sep-13
Katol Branch	NGPB01585D	2013-14	Q3	26Q	24200	31-May 14	16-May-14
Saoner Branch	NGPB01643F	2013-14	Q1	26Q	13170	24-Feb-14	19-Oct-13
Devalamati Branch	NGPB01722A	2013-14	Q4	26Q	72200	22-May 15	11-May-15
Sawargaon Branch	NGPB01725D	2012-13	Q2	26Q	33000	24-Jul-13	29-Mar-13
Sawargaon Branch	NGPB01725D	2012-13	Q4	26Q	13800	26-Feb-14	23-Jul-13
Kodamendhi Branch	NGPB01769F	2013-14	Q3	26Q	10000	16-Mar-14	6-Mar-14
Takalghat Branch	NGPB01673A	2012-13	Q2	26Q	24600	24-Jul-13	15-Feb-13
Kelwad Branch	NGPB01794C	2013-14	Q2	26Q	102800	30-Mar-15	13-Mar-15
Kelwad Branch	NGPB01794C	2013-14	Q3	26Q	6760	30-Mar-15	13-Mar-15
Kelwad Branch	NGPB01794C	2013-14	Q4	26Q	60400	30-Mar-15	13-Mar-15
Bazargaon Branch	NGPB01937F	2013-14	Q2	26Q	19400	31-Jan-14	20-Jan-14

13. Per contra, Ld. DR has relied on the decisions of the Assessing Officer as well as the Id.CIT(A). It was further submitted that Hon'ble

Bombay High Court in case of Rashmikanth Kundalia(supra) has decided the matter against the assessee and has drawn our specific reference to para 13,14,18 and 22 of the said decision. Further, it was submitted that the Co-ordinate Nagpur Benches decision in case of M/s. Rajyas Software Pvt Ltd (supra), which has been relied on by Ld. AR has not considered the decision of the Hon'ble Jurisdictional High Court in case of Rashmikanth Kundalia (supra) and therefore, the said decision of the Coordinate Nagpur Benches doesn't have a binding effect on the present appeals. It was submitted that the decision of the Hon'ble Bombay High Court, being the jurisdictional High Court decision, the same will have a binding effect on these cases and the same should be followed while deciding the instant appeals. Further, the ld DR placed reliance on the Hon'ble Delhi High Court decision in case of Biswajit Das v/s UOI 103 taxmann.com 290, as well as Hon'ble Gujarat High court decision in case of Rajesh Kourani (supra). It was submitted that where the majority of the High Court decisions including the jurisdictional High Court decision are in favour of the Revenue, the same should be followed.

14. In his rejoinder, the ld. AR has submitted that the Co-ordinate Nagpur Benches decision in case of M/s. Rajyas Software Pvt Ltd (supra) has considered the Co-ordinate Pune Benches decision in case of Medical Superintendent Rural Hospital (supra) case and which has in turn duly considered the decision of Hon'ble Bombay High Court in case

of Rashmikant Kundalia(supra) and has held that in the said decision, the Hon'ble High Court has only decided the constitutional validity of levy of fee under section 234E of the Act. It was submitted that the decision of the Hon'ble Jurisdictional High Court decision was therefore duly considered by the Nagpur Benches of the Tribunal while deciding the aforesaid appeal and being the decision of the Coordinate Benches, the same continues to have a binding effect from the stand point of consistency. Regarding Hon'ble Delhi High Court decision in case of Biswajit Das v/s UOI (supra), it was submitted that the said decision was again regarding the constitutional validity of section 234E and which is not the subject matter of present dispute. It was further submitted that Hon'ble Kerala High Court in case of M/s. Sarala Memorial Hospital (supra), which is the latest High Court decision on the matter has considered both the earlier Karnataka and Gujarat High Court decisions as well as CBDT circular No. 19/2015 dated 27.11.2015, which apparently has escaped the attention of the Hon'ble Gujarat High Court in case of Rajesh Kourani (supra) and too that extent, the decision of the Hon'ble Gujarat High Court stand distinguishable. It was accordingly submitted that the matter is squarely covered by the Hon'ble Karnataka and Kerala High Court decisions as well as decisions of the Hon'ble Supreme Court referred above, the appeals filed by the assessee deserves to be allowed.

15. We have heard the rival contentions and perused the material available on record. In case of Rashmikant Kundalia's case (*supra*), the petitioners before the Hon'ble Bombay High Court have challenged the constitutional validity of section 234E of the Act and the said petition was dismissed by the Hon'ble Bombay High Court holding that section 234E doesn't violate any provisions of Constitution and is therefore, intra vires the Constitution of India. However, as far as the power of the Assessing officer to levy late filing fee under section 234E while processing TDS statement(s) filed by the deductor prior to 01.06.2015, we find that it was not decided by the Hon'ble Bombay High Court. Therefore, we are unable to accept the contention raised by the Id DR that the matter is covered in favour of the Revenue by the decision of the Hon'ble Jurisdictional High Court. Similarly, the decision of the Hon'ble Delhi High Court in case of Biswajit Das v/s UOI (*supra*) is on constitutional validity of section 234E and not on the powers of the Assessing officer to levy fee under section 234E prior to 01.06.2015 and therefore, doesn't support the case of the Revenue.

16. We have also gone through the decision of Hon'ble Karnataka High Court in the case of Shri Fatheraj Singhvi & others (*supra*) wherein the issue of levy of fees u/s 234E on statements processed u/s 200A before 01.06.2015 has been categorically discussed by the Hon'ble High Court and it was held that the amendment to section 200A which has come in

effect from 1.6.2015 is having prospective effect and no demand for fee u/s 234E can be made in intimation issued for TDS deducted u/s 200A before 01.06.2015 and relevant findings contained at paras 21-24 read as under:

“21. if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory

mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported

exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

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.”

17. We have also gone through the decision of Hon'ble Kerala High Court in the case of M/s Sarala Memorial Hospital (*supra*) wherein the issue of levy of fees u/s 234E on statements processed u/s 200A pertaining to Assessment Years 2012-13 and 2013-14 has been discussed by the Hon'ble High Court and it was held that the amendment to section 200A which has come in effect from 1.6.2015 is having prospective effect and no demand for fee u/s 234E can be made in intimation issued for TDS deducted u/s 200A before 01.06.2015 and the demand was quashed. Here, it is relevant to note that the Hon'ble Kerala High Court has taken into consideration the earlier two decisions of the Hon'ble Karnataka High Court in case of Shri Fatheraj Singhvi & others (*supra*) as well as the decision of Hon'ble Gujarat High Court in case of Rajesh Kourani vs UOI (*supra*) and held that there is cleavage of judicial opinion and has followed the Karnataka High Court decision stating that the Hon'ble Gujarat High Court has not considered the

CBDT Circular No. 19 of 2015, issued in the context of amendment brought in by the Finance Act 2015 in section 200A where at para 47.20, it has been clearly emphasized that these amendments would take effect from 01.06.2015.

18. We have also gone through the judgment of Hon'ble Supreme Court in the case of CIT vs. Vatika Township Pvt. Ltd. (*supra*) wherein the Constitution Bench of the Hon'ble Supreme Court has discussed in great detail the general principle of concerning retrospectively and held that of the various rules guiding how a legislation has to be interpreted, one established rule is that unless contrary intention appears, a legislation is presumed not to have a retrospective operation.

19. We have also gone through the judgment of Hon'ble Supreme Court in the case of CIT vs. M/s Vegatable Products Ltd (*supra*) wherein the Hon'ble Supreme Court has held that where there are two reasonable constructions of a taxing provision are possible, the construction which favours the assessee must be adopted and in that case, two High Courts have taken a view in favour of the assessee and another two High Courts have taken a different view and it was held by the Hon'ble Supreme court that where the view taken by the two High Courts is a tenable view in favour of the assessee, the same should be followed. It is also a settled rule of interpretation that where there is difference of opinion among

different High Courts on a particular matter, the view in favour of the assessee needs to be followed in absence of any decision of the Jurisdictional High Court. In the instant case, as we have noted above, there is no jurisdictional High court decision on the matter of power of levy of late filing fee under section 234E prior to 1.06.2015, the decisions of the Hon'ble Karnataka High Court and which has subsequently been followed by the Hon'ble Kerala High Court therefore needs to be followed as against the decision of the Hon'ble Gujarat High Court in the present set of appeals.

20. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, respectfully following the decisions of Hon'ble Supreme Court, Hon'ble Karnataka High Court and Hon'ble Kerala High Court and the consistent position taken by the various Benches of the Tribunal including the Nagpur Benches, in the instant appeals where the undisputed facts are that demand has been raised under section 234E for the quarterly TDS statements (Form 26Q) filed, processed and intimations issued prior to 1.06.2015 for the financial years 2012-13, 2013-14 and 2014-15, we set aside the order of Id. CIT (A) and direct the Assessing officer to delete the demand raised u/s 234E in respect of all TDS statements processed u/s 200A prior to 01.06.2015 and also delete the consequential levy of interest u/s 220(2) of the Act. Thus, grounds raised by the assessee are allowed.

In the result, all the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 06.06.2022

Sd/-
YOGESH KUMAR U.S
JUDICIAL MEMBER

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

NAGPUR, DATED: 06.06.2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

KasarlaThirumalesh
Sr. Private Secretary

True Copy
By Order

(A.R./Sr. P.S./P.S.)
ITAT, Nagpur