

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' BENCH, PUNE

SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

Sr. No.	ITA No.	A.Y.	Appellant	Respondent
1 to 3	172 to 174/PUN/2021	2013-14 to 2015-16	Spadeworx Software Services Pvt. Ltd. 101B, First floor, Nano Space IT Park, 51B/2, Baner, Pune-411 045. PAN: AAKCS 6126 J	The Dy. CIT CPC- TDS- Ghaziabad
4	226/PUN/2021	2013-14 (Q2/24Q)	Shatabdi Institute of Engg. & Research, Agaskhind, Post Shenit (Vaideolali camp) Tal. Sinner, Nasik PAN : AAETA6485B	The Asstt. CIT, CPC (TDS), Ghaziabad
5.	227/PUN/2021	2013-14 (Q3/24Q)	-do-	-do-
6.	228/PUN/2021	2013-14 (Q4/24Q)	-do-	-do-
7.	229/PUN/2021	2013-14 (Q2/26Q)	-do-	-do-
8.	230/PUN/2021	2013-14 (Q4/26Q)	-do-	-do-
9.	231/PUN/2021	2014-15 (Q1/24Q)	-do-	-do-
10	232/PUN/2021	2014-15 (Q2/24Q)	-do-	-do-
11.	233/PUN/2021	2014-15 9Q3/24Q)	-do-	-do-
12.	234/PUN/2021	2014-15 (Q4/24Q)	-do-	-do-
13.	235/PUN/2021	2014-15 (Q1/26Q)	-do-	-do-
14.	236/PUN/2021	2015-16 (Q1/24Q)	-do-	-do-
15.	237/PUN/2021	2015-16 (Q2/24Q)	-do-	-do-
16.	238/PUN/2021	2015-16 (Q3/24Q)	-do-	-do-

Appellants No. 1 to 3 by : Shri Kiran Sanmane

Appellants No. 4 to 16 by : Shri Sanket Joshi

Respondent by : Shri M.G. Jasnani

Date of Hearing : 16-06-2022

Date of Pronouncement : 17-06-2022

ORDER**PER BENCH**

These bunch of 16 appeals preferred by different assesseees emanates from respective orders of the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi, for the respective assessment years captioned hereinabove and as per the grounds of appeal on record.

2. At the very outset we find that the facts and issues in all these appeals are identical and similar and therefore, these cases were heard together and are disposed of by this consolidated order.

3. It is observed that all these appeals are time barred by nominal days. However, taking into consideration the outbreak of Covid 19, at the relevant time, the said delay is condoned and the instant appeals are admitted for disposal on merits by virtue of judgment of the Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC)* read with *judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314.*

4. There is a common grievance in all these appeals before us and at the time of hearing, the respective Counsels for the aforesaid assesseees submitted that the only issue for adjudication is that the Department has erred in law and on facts in levying fees u/s 234E of the Income-tax Act, 1961 (hereinafter referred to as "the Act") through an intimation u/s 200A of the Act for a period prior to 01-06-2015. The Department ought to have appreciated that levy of fees u/s 234E of the Act was not permissible adjustment as contemplated u/s 200A of the Act for the period prior to 01-06-2015.

5. That from the aforesaid captioned matters for discussing the facts, we would take up ITA No. 172/PUN/2021 for A,Y. 2013-14 as the lead case.

6. The brief facts are that the assessee filed TDS return for F.Y. 2012-13, the details of which are as follows:

Quarter	Due dates	Form 24Q	Delay in days	Form 26Q	Delay in days
02	15 th Oct. 2012	20 th July 2013	278	20 th July 2013	278
03	15 th Jan. 2013	20 th July 2013	186	20 th July 2013	186
04	15 th May 2013	20 th July 2013	66	20 th July 2013	66

7. The returns mentioned above were accepted by the TIN. Subsequently, Dy. CIT Centralised Processing Cell TDS vide his order dated 10-06-2014 and 03-10-2016 levied a late fee of Rs. 2,12,000 as follows:

	Form 24Q	Form 26Q	Total
01	NIL	NIL	NIL
Q2	Rs. 55,600/-	Rs. 55,600/-	Rs. 1,11,200/-
Q3	Rs. 37,200/-	Rs. 37,200/-	Rs. 74,400/-
04	Rs. 13,200/-	Rs. 13,200/-	Rs. 26,400/-
	Rs. 1,06,000/-	Rs. 1,06,000/-	Rs. 2,12,000/-

8. The assessee has submitted that there was a delay in payment of TDS by the assessee as they were facing severe cash problems. But, inspite of the same they have paid all the amounts due within the due date of filing of I.T. return. The interest on these amounts has also been paid later on by the assessee. That as per the law and procedure for filing of TDS return they could not be filed without payment of TDS amount. Hence, the assessee company has filed returns immediately after payment of taxes without any significant delay. The details of the same are as follows:

Quarter	Form 24Q		Form 26Q	
	<i>Last dt. of tax payment</i>	<i>Date of return filing</i>	<i>Last dt. Of tax payment</i>	<i>Dt. Of return filing</i>
Q2	17 th July	20 th July	17 th July	20 th July

	2013	2013	2013	2013
Q3.	17 th July 2013	20 th July 2013	17 th July 2013	20 th July 2013
Q4	17 th July 2013	20 th July 2013	17 th July 2013	20 th July 2013

9. In this regard the assessee has also placed reliance on the decision of Co-ordinate Bench Pune in the case of Marshall Breeders Pvt. Ltd. Vs. Asstt. CIT in ITA No. 2018, 2019, 2020, 2021, 2022,2023, 2024 and 2025/PUN/2017 wherein it has been held that the A.O is not empowered to charge late fees u/s 234E of the Act by way of intimation issued u/s 200A of the Act in respect of default prior to 01-06-2015.

10. We have perused the case records and considered the submissions placed before us by the parties herein. The ld. D.R fairly conceded that in all these cases the late fee has been charged u/s 234E of the Act prior to 01-06-2015. We have also examined the assessment years involved and the quarterly payment details of TDS and corresponding filing of TDS returns and we are convinced that the action taken by the subordinate authorities is prior to 01-06-2015. We find that this issue had come up for adjudication before us in the case of Marshall Breeders Pvt. Ltd (supra) where we have considered a series of decisions of the Raipur Bench of the Tribunal in the cases of Chhatisgarh Rajya Gramin Bank & Ors. Vs. The I.T.O TDS Bilaspur (CG) in ITA No. 39/RPR/2017 and others for A.Y. 2014-15 and others, decided on 31-01-2019 wherein it was observed and held 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 4 ITA Nos.2018 to 2025/PUN/2017 Marshall Breeders Pvt. Ltd. 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 9th 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 Bizor P Solutions Vs Union of India* [WP No. 6918-6938/2014(T-IT), Hon^{ble} Rajasthan High Court in the case of *Om Prakash Dhoot Vs Union of India* [WP No. 1981 of 2014] and of Hon^{ble} Bombay High Court in the case of *Rashmikant Kundalia Vs 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 5 ITA Nos.2018 to 2025/PUN/2017 Marshall Breeders Pvt. Ltd. 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: 8 ITA Nos.2018 to 2025/PUN/2017 Marshall Breeders Pvt. Ltd.

“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 Id. 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.”

11. That on the basis of the aforesaid decision and following the same, on the same parity of reasoning, we had allowed the appeals of the assessee in case of Marshall Breeders Pvt. Ltd. (supra). Therefore, the legal parameters are absolutely crystal clear that prior to 01-06-2015 there was no enabling provision in sec. 200A of the Act for raising a demand in respect of levy of fees u/s 234E of the Act. Therefore, we hold that intimation u/s 200A of the Act as confirmed by the Id. CIT(A) so far as the levy of fee u/s 234E of the Act is

therefore set aside and the fees levied are deleted. The grounds raised by the assessee are allowed.

12. In the result, the appeal in **ITA No. 172/PUN/2021 for A.Y. 2013-14 is allowed.**

13. **ITA No. 173 and 174/PUN/2021 for the respective assessment years.**

In the aforesaid captioned appeals hereinabove filed by the assessee, the facts and circumstances of the case are identical except the amounts. Since all other facts and arguments of the parties are same and similar, the same ruling as rendered in ITA No. 172/PUN/2021 shall apply *mutatis mutandis* to the other said appeals hereinabove also. Therefore, in these cases, we set aside the order of the Id. CIT(A) and allow the appeals of the assessee.

14. In the result, the appeals in **ITA No. 173 and 174/PUN/2021 are allowed.**

15. **ITA No. 226 to 238/PUN/2021 for the respective assessment years:**

In these appeals captioned hereinabove filed by the assessee, the facts and circumstances of the case are identical except the amounts. Since all other facts and arguments of the parties are same and similar, the same ruling as rendered in ITA No. 172/PUN/2021 shall apply *mutatis mutandis* to these appeals also. Therefore, in these cases also, we set aside the order of the Id. CIT(A) and allow the appeals of the assessee.

16. In the result, the appeals in **ITA No. 226 to 238/PUN/2021 are allowed.**

17. In the combined result, **all the appeals of the aforestated assessees are allowed.**

Order pronounced in the open Court on this 17th day of June 2022

Sd/-
(R.S. SYAL)
VICE PRESIDENT

sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Pune; Dated, the 17th day of June 2022
Ankam

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT Pune
4. The CIT(A)- , NFAC, Delhi
5. D.R. ITAT 'B' Bench
5. Guard File

BY ORDER,

/// TRUE COPY ///

Sr. Private Secretary
ITAT, Pune.

1	Draft dictated on	17-06-2022	Sr.PS/PS
2	Draft placed before author	17-06-2022	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	17-06-2022	Sr.PS/PS
7	Date of uploading of order	17-06-2022	Sr.PS/PS
8	File sent to Bench Clerk	17-06-2022	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		