

यकरअपीलीयअधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी मंजूनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**I.T.A. Nos.692 & 693, 694 to 697/CHNY/2022**  
**Assessment Years : 2014-15 [24Q – Q2] & 2014-15 [26Q – Q2],  
2015-16 [24Q – Q1, Q2, Q3 & Q4]**

M/s. Kumar Spinning Mills Private  
Limited,  
No.19, Pandia Vellalar Street,  
Palayamkottai,  
Tirunelveli – 627 002. TN

**PAN: AAACK 6365R**  
(अपीलार्थी/**Appellant**)

Vs. The Assistant Commissioner of  
Income Tax,  
Central Processing Cell – TDS,  
TDS, CPC,  
Aayakar Bhawan,  
Sector – 3, Vaishali,  
Ghaziabad – 201 010.  
(प्रत्यर्थी/**Respondent**)

अपीलार्थीकीओरसे/Appellant by : Shri Kathir, Advocate  
प्रत्यर्थीकीओरसे/Respondent by : Shri. P. Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 26.09.2022  
घोषणा की तारीख/Date of Pronouncement : 12.10.2022

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

These six appeals filed by the Assessee are directed against separate, but identical orders of the learned Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Appeal Centre [NFAC], Delhi, all dated 12.07.2022 for the relevant Assessment Years 2014 – 2015 and 2015 – 2016. Since the facts in all

these six appeals are identical and the issues common, for the sake of convenience, these six appeals are heard together and disposed off by this consolidated order.

2. The Assessee has more or less raised various common grounds in all these six appeals and therefore, for the sake of brevity, the grounds that are raised in the appeal filed by the Assessee in I.T.A. No.692/Chny/2022 are reproduced as under:

*"1. The order of the Commissioner of Income Tax (Appeals) is erroneous as the same is contrary to the provisions of law and facts of the case.*

*2.1 The Commissioner of Income Tax (Appeals) erred in dismissing the appeal filed against the order u/s.154 of the Act for the reason that an appeal ought to have been filed against the order u/s.200A of the Act.*

*2.2 The Appellant having taken remedy available u/s.154 of the Act against the order u/s.200A of the Act prior to filing of the appeal, the Commissioner of Income Tax (Appeals) has erroneously held that the order u/s.154 of the Act does not give rise to any new grievance.*

*2.3 The impugned order passed by the Commissioner of Income Tax (Appeals) dismissing the appeal while failing to order the deletion of the late fee u/s.234E of the Act is illegal and liable to be quashed.*

*3.1 The Commissioner of Income Tax (Appeals) ought to have seen that the amendment to Section 200A of the Act by way of substitution of clauses (c)*

*to (f) providing for demanding late fees u/s.234E of the Act having been inserted only with effect from 01.06.2015, the late fees of Rs.1,05,800/- levied by the intimation u/s.200A for payments made before such date is not supported by any enabling machinery / provision and is thus liable to be deleted.*

*3.2 The Commissioner of Income Tax (Appeals) erred in not observing that the demand of late fees by itself being without jurisdiction, the interest levied for delay in the payment of late fees u/s.220(2) of Rs.81,466/- also deserves to be deleted in toto.*

*3.3 IN any case, contrary to the observation of the Commissioner of Income Tax (Appeals), interest u/s.220(2) of the Act having been levied for the first time in order u/s.154 of the Act, the same is to be deleted as it falls outside the scope of Section 154(1) of the Act and runs contrary to Section 154(3) of the Act.”*

3. The brief facts of the case are that the Assessee had filed the TDS Quarterly statement of Form 24Q for the Quarter-2 [Q2] of the Financial Year 2013 – 2014 on 28.03.2015 which was due to be filed on 15.10.2013 with a delay of 529 days. The Assessee had also filed a correction statement on 19.08.2021 and an intimation u/s.154 of the Income Tax Act, 1961 dated 19.08.2021 that was received by the Assessee. The Assessing Officer TDS(CPC) while processing the quarterly statement had levied late fee u/s.234E of the Act for 529 days for the delay in filing of the quarterly TDS statement.

4. Aggrieved, the Assessee carried the matter on appeal before the First Appellate Authority and challenged the levy of late fee u/s.234E of the Act for belated filing of the TDS returns. The Commissioner of Income Tax (Appeals) had dismissed the appeal filed by the Assessee on technical grounds by holding that the Assessee ought to have filed the appeal against the original order issued u/s.200A of the Income Tax Act, 1961 which was passed on 01.04.2015. However, the Assessee has filed an appeal against the order passed u/s.154 of the Act and thus opined that the limitation provided for filing of the appeal cannot be extended to the order passed u/s.154 of the Act and thus, the CIT(A) had rejected the appeal filed by the Assessee and sustained the levy of late fee.

5. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the Assessee is now in appeal before the Tribunal. The learned Authorized Representative of the Assessee submitted that the learned Commissioner of Income Tax (Appeals) had dismissed the appeal of the

Assessee filed against the order passed u/s.154 of the Act without appreciating the fact that the Appellant/Assessee had taken the remedy available u/s.154 of the Act against the order passed u/s.200A of the Act prior to filing of the appeal. Therefore, the learned Authorized Representative of the Assessee submitted that the issues involved in this appeal are to be set aside and the matter be sent back to the file of the Commissioner of Income Tax (Appeals) to decide the issues involved in this appeal on merits.

6. The learned Departmental Representative, on the other hand had supported the appellate order of the learned Commissioner of Income Tax (Appeals) and submitted that the Assessee ought to have filed the appeal against the original order issued u/s.200A of the Act, levying late fee u/s.234E of the Act. However, the Assessee preferred an appeal against the order passed u/s.154 of the Act and challenged the levy of late fee without appreciating the fact that the scope of provision of Section 154 is very limited in as much as the Assessee can question the validity of the

order. However, he cannot question the late fee levied in the order passed u/s.200A of the Act.

7. We have heard both the parties, perused the materials available on record and had gone through the orders of authorities below. It is an admitted fact that the Assessee has filed the quarterly TDS returns beyond the due date specified under the Act. The Assessing Officer has processed the TDS returns filed by the Assessee and had levied late fee u/s.234E of the Act for the delay in filing the quarterly statement. The Assessee has filed a correction statement and rectified the mistakes in filing the original TDS statement and such correction statement has been processed u/s.154 of the Act. The Assessee has challenged the order passed u/s.154 of the Act before the Commissioner of Income Tax (Appeals) and the Commissioner of Income Tax (Appeals) had rejected the appeal filed by the Assessee against the order u/s.154 of the Act on the ground that the Assessee ought to have filed the appeal against the order passed u/s.200A of the Act levying late fee u/s.234E of the Act, but the appeal cannot

be filed against the order passed u/s.154 of the Act. We do not find merits in the reasons given by the CIT(A) in dismissing the appeal filed by the Assessee for the simple reason that the Act provides for filing correction statement and to rectify any error or mistakes in the TDS statement originally filed in the respective quarters and the said statement has been processed by the TDS(CPC) and issued intimation u/s.154 of the Income Tax Act, 1961. Further, any order passed u/s.154 of the Act is an appealable order before the first Appellate Authority. Therefore, in our considered view, the Commissioner of Income Tax (Appeals) ought to have adjudicated the appeal filed by the Assessee against the order passed u/s.154 of the Act and should have decided the issues involved in this appeal on merits. But, the learned Commissioner of Income Tax (Appeals) had dismissed the appeal filed by the Assessee by holding that the appeal filed by the Assessee against the order passed u/s.154 of the Act is not maintainable. In our considered view, the learned Commissioner of Income Tax (Appeals) is grossly erred in dismissing the appeal filed by

the Assessee as not maintainable, without discussing the issues involved in the appeal on merits and thus, we set aside the order of the learned Commissioner of Income Tax (Appeals) and restore the issues to the file of the first Appellate Authority and direct the learned Commissioner of Income Tax (Appeals) to decide the issues involved in this appeal on merits including the validity of the order passed u/s.154 of the Act by the Assessing Officer and consequent issues involved therein.

8. In the result, this appeal of the Assessee in I.T.A. No.692/Chny/2022 is treated as allowed for statistical purposes.

9. **I.T.A. Nos.693 to 697/Chny/2022**: The facts and issues involved in all these appeals filed by the Assessee are identical to the facts and issues that we had considered in I.T.A. No.692/Chny/2022 for the Assessment Year 2014 – 2015. The reasons given by us in I.T.A. No.692/Chny/2022 shall *mutatis mutandis* apply to these appeals as well. Therefore, for similar reasons, we set aside

the order of the learned Commissioner of Income Tax (Appeals) and restore the issues involved in these appeals to the first Appellate Authority and direct the learned Commissioner of Income Tax (Appeals) to decide the appeals on merits.

10. In the result, all the appeals filed by the Assessee in I.T.A. Nos.692 to 697/CHNY/2022 are treated as allowed for statistical purposes.

Order pronounced in the court on 12<sup>th</sup> October, 2022 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(जी मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated, the 12<sup>th</sup> October, 2022

IA, Sr. PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:** 1. अपीलार्थी/Appellant  
2. प्रत्यर्थी/Respondent  
3. आयकरआयुक्त (अपील)/CIT(A)  
4. आयकरआयुक्त/CIT  
5. विभागीयप्रतिनिधि/DR  
6. गार्डफाईल/GF