

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &  
SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

I.T.A. No. 55/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Majhouli Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-2, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 56/JAB/2022  
(Asst. Year: 2013-14)

Madhyanchal Gramin Bank, Neguwan Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 57/JAB/2022  
(Asst. Year: 2013-14)

Madhyanchal Gramin Bank, Orchha Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 58/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Rajapur Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 59/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Niwadi Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 60/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Mohangarh Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 61/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Chandera Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 62/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Laron Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 63/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Mandi Bamora Branch, Poddar Colony, Tili Road, Sagar (MP)  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 64/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Mahewa Branch, Poddar Colony, Tili Road, Sagar.  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-2, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 65/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Ranibaug Panna Branch, Poddar Colony, Tili Road, Sagar (MP)  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-2, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 66/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Saleha Branch, Poddar Colony, Tili Road, Sagar.  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-2, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 67/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Laundi Branch, Poddar Colony, Tili Road, Sagar.  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 68/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Chhatarpur Branch, Poddar Colony, Tili Road, Sagar.  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 69/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Tattam Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 70/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Maharajpur Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 71/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Barigarh Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 72/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Gourihar Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 73/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Pipat Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 74/JAB/2022  
(Asst. Year: 2015-16)

Madhyanchal Gramin Bank, Kishangarh Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 75/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Buxwaha Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 76/JAB/2022  
(Asst. Year: 2013-14)

Madhyanchal Gramin Bank, Mandi Road Nowgong Branch, Poddar Colony, Tili Road, Sagar.  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

I.T.A. No. 77/JAB/2022  
(Asst. Year: 2014-15)

Madhyanchal Gramin Bank, Tendukheda Branch, Poddar Colony, Tili Road, Sagar  [PAN : AAAJM 1901 A]	vs.	ITO (TDS)-1, Jabalpur.
(Appellant)		(Respondent)

Appellant by : Shri Hardik Chordia &  
Shri Pratik Sadrani, FCAs  
Respondent by : Shri Ravi Mehrotra, Sr.DR  
Date of hearing : 13/09/2022  
Date of pronouncement : 31/10/2022

## **ORDER**

### **Per Bench:**

This is a set of 23 Appeals by different branches of the assessee-bank contesting the confirmation of levy of late filing fee under section 234E of the Income Tax Act, 1961 ('the Act' hereinafter), aggregating to Rs. 2,69,921, by the National Faceless Appeal Centre, Delhi ('CIT(A)' for short) on processing of statements filed by the assessee u/s. 200A of the Act for financial year (f.y.) 2012-13 (Qtr-III onwards) to f.y. 2014-15 (Qtr-I).

2. The controversy arising in the instant appeals, as projected before us by Shri Chordia, the Id. counsel for the assessee, was with reference to the competence of the Assessing Officer (AO) in levying the fee u/s. 234E, which section stands co-opted on the statute by Finance Act, 2012, w.e.f. 01/07/2012, on the processing of a statement (filed u/s. 200(3) of the Act) u/s. 200A of the Act, which provision came on the statute only w.e.f. 01/06/2015. That is, the mismatch in the dates of the commencement of the charging and the machinery provision; the latter, s.200A, providing for the determination and recovery of the fee, coming into effect only later. While some Hon'ble High Courts viz. Gujarat (*Rajesh Kourani v. UOI* [2017] 83 taxmann.com 137); Rajasthan (*Dundlod Shikshan Sansthan v. UOI* [2015] 63 taxmann.com 243); Madras (*Qatalys Software Technologies (P.) Ltd. v. UOI* [2020] 115 taxmann.com 345); P&H (*Dr. Amrit Lal Mangal vs. UOI* [2015] 62 taxmann.com 310), have taken a view in favour of the levy being valid, some others, as Karnataka (*Fatheraj Singhvi & Ors. v. UOI* in W.P.No. 2662,2663/2015 (T-IT), dated 26/08/2016) and Kerala (*Sarala Memorial Hospital v. UOI* in WP(C) No. 37775/2018 dated 18/10/2018), have held to the contrary. The reason that guides the former set of decisions is that the charging provision is s. 234E. The charge having been created and the source of power for levy being available w.e.f. 01/07/2012, the same could always be collected even in the absence of a specific provision for recovery; the law obliging the assessee to pay the same within a

specified time upon quantifying the liability in the manner specified in s.234E itself. Clause (c) to sub-section (1) of sec. 200A, co-opted on the statute by Finance Act, 2015 w.e.f. 01/06/2015, providing for processing of statements filed u/s. 200(3), is only a machinery provision. In view of the Hon'ble Karnataka and Kerala High Courts, however, the charge fails in the absence of a machinery provision for determination and recovery, which came into effect only later, i.e., w.e.f. 01/06/2015, so that no fees for the period prior to that date could be recovered. Further, as argued by Sh. Chordia, the fee is in the instant case/s being sought to be determined and recovered through Intimation/s u/s. 154, which is also not maintainable in view of conflict in judicial opinion, precluding debatable issues. Rather, even with reference to s. 200A, a conflict of judicial opinion would *per se* warrant a decision in favour of the assessee, i.e., in absence of a decision by the Hon'ble jurisdictional High Court, in view of the decision by the Apex Court in *CIT v. Vatika Township Pvt. Ltd.* [2014] 367 ITR 466 (SC).

3. We have heard the parties, and perused the material on record.

3.1 We may begin by reproducing the relevant provisions of the Act, also noting their date of commencement:

**Duty of person deducting tax.**

**200.** (1) ..... (2A)

(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare such statements for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

**Provided** that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

**Processing of statements of tax deducted at source.**

**200A.** (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 sub-section.

Clause (c) stands amended by Finance Act, 2015, w.e.f. 1-6-2015, as under, with consequential amendments in erstwhile clauses (c) to (e):

‘(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;’

**Fee for default in furnishing statements.**

**234E.** (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 sub-section (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.* (emphasis, ours)

3.2 Even as observed by the Bench during hearing, the controversy arising in the instant set of cases is not as is being projected. In all these cases, for which ITA No. 55/JAB/2022 was adopted as the lead case, the levy u/s. 234E is in respect of the correction statements, filed under *proviso* to s. 200(3), after 01/06/2015. As explained by Sh. Chordia, correction statements were filed after depositing the shortfall in the tax deducted (or collected) at source under various provisions of Chapter-XVII of the Act, even as they may be, as also appears to be the case, also for correcting invalid/no PAN cases (refer para 6 of the Intimation). We shall advert to this aspect of our discussion on the levy u/s. 234E later. For instance, the correction statement in ITA No. 55/JAB/2022 was filed on 27/4/2020, and processed on the same date, i.e., 27/4/2020. *Where, then, one may ask, does the issue of retrospectivity of sec.200A, or the controversy, as projected, arise?* The same, clearly a machinery provision, is a part of the procedural law, enabling determination and recovery of the fees u/s. 234E upon processing of a statement or, as the case may be, a correction statement, on or after 01/06/2015. The mechanism for determination and recovery of the said fees, available w.e.f. 01/06/2015, stands exercised only after that date, *qua* statement/s furnished u/s. 200(3), in all cases, after that date. The provision (s.200A) being a part of the

procedural law, i.e., as opposed to substantive law, it shall be applicable w.e.f. that date, i.e., irrespective of the period to which the statement being processed thereunder may relate. Though the law in the matter is well-settled, one may toward this refer to the decision in *CWT v. Sharvan Kumar Swarup & Sons* [1994] 210 ITR 886 (SC). In fact, even the levy is not retroactive, and is applicable only *qua* statements obliged to be filed on or after 01/7/2012.

Further, for each case, the fees, though worked out (refer Note 1(c) of the Intimation) with reference to the due date of filing the statement for Qtr-II of f.y. 2012-13, i.e., 15/10/2012, the amount levied, being Rs. 6,000 (for ITA No. 55/JAB/2022), would remain unaltered even if the same was worked out at the stipulated rate of Rs. 200 per day w.e.f. 01/06/2015, i.e., the date on which clause (c) came to be inserted in s.200A(1). We have toward this gleaned through the Intimations in all these appeals. The maximum amount of late fee is Rs. 46,700/- (for Qtr-IV of f.y. 2013-14), which works to a delay of 232 days, even as delay reckoned from 01/06/2015 (to the date of filing, i.e., 27/04/2020) is much higher (1790 days). The reason in all the cases for levy in a sum lower than that leviable with reference to the period of delay, even if reckoned w.e.f. 01/06/2015, not to speak with reference to period of actual delay (as, for instance, w.e.f. 15/10/2014 for ITA No. 55/JAB/2022), is the capping of the same to the amount of tax deductible (or collectible) at source (s. 234E(3)). In sum, the levy u/s. 234E in all these appeals is:

- a) *qua* statement/s filed u/s. 200(3) on or after 01/06/2015;
- b) in the sum which is referable to the delay computed w.r.t. this date.

That is, there is, *in effect*, no levy for any period prior to 01/06/2015. *It is this that led us to remark at the beginning of our discussion, as indeed during hearing itself, as to what, then, is the controversy in the instant cases about?* The Intimations, though stated to be u/s. 154, are, in our considered view, only u/s. 200A(1), made after 01/06/2015, in respect of a statement/s filed after that date and, as afore-noted, at an amount referable to the period after 31/5/2015. We

clarify so by way of abundant caution, so as to pre-empt any argument, as indeed was made before us, albeit without reference to the facts, as to the limited scope of an order u/s. 154, precluding any debatable issue. Even as the impugned intimations stand clarified to be u/s. 200A(1) (also see para 3.3), there is, as also explained hereinbefore, no scope of any debate; all the parameters for the levy u/s. 234E being defined therein, with power having been exercised only *qua* statements filed on or after 01/06/2015.

3.3 It may be argued, though was not and, in our view, only rightly so, that no late fee could be levied *qua* a statement u/s. 200(3), which is not in respect of deposit of tax deductible (or collectible) at source, short deducted/collected earlier, or though not so, short deposited. This is as the tax having been deducted or collected, since deposited in full, there is no loss to the Revenue on account of the discrepancy in the earlier original statement warranting correction, viz. correct PAN, etc. The argument would be without reference to the clear language of the provision of the Act, reproduced hereinbefore, as well as *de hors* the decisions by the various Hon'ble High Courts upholding the constitutionality of s.234E. The levy; its parameters being pre-defined, admits of no two views, i.e., so that where there is a satisfaction of the condition precedent, i.e., delay in filing the statement u/s. 200(3) within the prescribed time, the levy is attracted. The very fact of filing a 'correction statement', provision for which stands inserted by Finance (No.2) Act, 2014, w.e.f. 01/10/2014, implies that the statement filed earlier was admittedly not correct in some manner. It is, therefore, inconsequential as to what motivates or prompts the correction, as long as the same, admitted in the instant case(s), is warranted. The correction statement is as much a statement u/s. 200(3) as was the statement preceding it, and is to be for that reason processed u/s. 200A, *only whereupon* the particulars furnished therein could be taken cognizance of and credit to the right person (defined by PAN) allowed. The rationale of the levy, as explained by the Hon'ble Court upholding section 234E, is to compensate the

Revenue for the cost entailed in addressing the issues arising out of the delayed filing of the statements inasmuch as the rightful deductees would not stand to be allowed credit for TDS/TCS, even if deposited to the credit of the Central Government in time, i.e., where there is a delay in filing the particulars, or filing incorrect particulars or mismatch therein. Reference, in this context, justifying the levy in view of the costs involved, be made to *Rajesh Kourani* (supra). The furnishing of particulars must be construed as correct particulars as, absence thereof would not result it being properly processed, serving its purpose. Why, it may well be that the original statement, though incorrect, is filed in time. Its processing u/s. 200A shall not result in any levy u/s. 234E, which may arise for the first time only on the assessee filing the correct statement later. The difference is though technical, arising on account of the revision of the statement by the assessee, correcting it, being not u/s. 154, but only u/s. 200.

4.1 We may, without prejudice, and if only for the sake of completeness of our order continue further, discussing a case where the fees levied is with reference to a period prior to 01/06/2015 (though after 30/6/2012). The same would, firstly, even so, fail the levy only to the extent it relates to the period prior to 01/07/2012, and not on or after 01/06/2015. *That is, the argument is, even granting so, valid only in part*, and shall not, the processing being on or after 01/06/2015, operate to fail the levy in full, but only for the period for which there was no mechanism for its determination and recovery, provided through clause (c) to s. 200A(1), w.e.f. 01/06/2015.

4.2 We may next consider the issue in two parts, i.e., where the levy includes:

- a) for the period comprised in the period 01/07/2012 to 31/05/2015; and
- b) the period on or after 01/06/2015.

The latter part, which obtains in the instant case/s, stands in fact discussed in the preceding paras, to find it as without any legal impediment. As regards the former

(a), the obligation to prepare and deliver a statement, caused under sub-section (3) of s.200, came on the statute-book by Finance (No.2) Act, 2004, w.e.f. 01/04/2005. The prescription as to the time allowed for the same stood altered by Finance (No.2) Act, 2009, w.e.f. 01/10/2009. Sec.200A providing for processing of such statement came on the statute-book by Finance (No.2) Act, 2009, w.e.f. 01/04/2010. It provided for processing of a statement filed u/s. 200(3), making adjustments for any incorrect claims or arithmetical errors, determining the amount payable by or refundable to the deductor after such adjustments, as indeed for concomitant interest (through generation of an Intimation). Section 234E, providing for the levy of a fee on delayed submission of a statement u/s. 200(3), came on the statute w.e.f. 01/07/2012. Clause (c), including the determination of the sum payable u/s. 234E after adjustment of the fee paid u/s. 234E, stands inserted in s.200A w.e.f. 01/06/2015. Consequent amendments were made in the erstwhile clauses (c) to (e), rechristening them as (d) to (f). It is clear, therefore, that sec.234E is the charging section. Being the source of power, a substantive provision, which is to operate prospectively, no fee could be levied for a period prior to 01/07/2012. That is, the charge is attracted w.e.f. 01/07/2012, w.r.t. each day of delay, reckoned with reference to the date on which the same was to be filed in terms of ss.200(3)/ 206C(3) where the same falls on or after 01/7/2012. *The same, however, is not, dependent on the actual delivery of the statement.* This is clear from the language of the s.234E(1) itself. Why, not so interpreting would be without rationale as an absolute default would remain outside the ambit of the provision, defeating the charge and, thus, the provision itself. Further, as the levy cannot, in any case, exceed the amount short deducted/deposited, one could avoid the levy merely by not filing the statement, with no attendant risk inasmuch as, as afore-noted, the delay beyond a particular period becomes inconsequential in view of the capping of the fee to the amount of TDS/TCS. Non-filing of the statement would imply its non-processing, which is u/s. 200A, effectively by-passing the levy u/s. 234E. *Would that therefore mean that no fee is liable to be charged in*

*such a case, either w.e.f. 01/7/2012, or even 01/6/2015?* That would be, quite plainly, ludicrous. The charge has to be, to make it effective, thus, necessarily be read as liable to be enforced, irrespective of the filing of the statement or its processing. As explained in *L. Hazarimal Kuthalia v. ITO* [1961] 41 ITR 12 (SC), the exercise of power would be referable to a jurisdiction which conferred validity upon it, and not to a jurisdiction under which it would be nugatory. As explained in *Gursahai Saigal v. CIT* [1963] 48 ITR 1 (SC), being even otherwise trite law, the provisions of a taxing statute dealing with the machinery for assessment have to be construed by the ordinary rules of construction, that is to say, in accordance with the clear intention of the Legislature, which is to make the charge levied effective. In interpreting the (machinery) provision, the rule is that construction should be preferred which makes the machinery workable. That is, a machinery section should be so construed as to make the charge effective (also see: *India United Mills Ltd. v. CEPT* [1955] 27 ITR 20 (SC)); the corresponding legal maxim being “*ut res valeat potius quam pareat*”. Further, the rule of strict construction, it is again well-settled, applies only to a taxing provision, i.e., to a provision creating a charge for tax and not that laying down the machinery for its calculation or procedure for its collection (see: *Banarsi Debi v. ITO* [1964] 53 ITR 100 (SC)). Implicit in the condition of s. 234E(3), providing for the deposit of the fee before delivering the statement u/s. 200(3)/206C(3), which thus provides for furnishing the particulars in respect of payment u/s. 234E(1), is the obligation to take cognizance thereof and make adjustments in its respect by the Revenue. It cannot be that while the deductor furnishes the details of the payment of fee, the AO cannot take cognizance thereof, rendering the furnishing thereof meaningless and to no effect. Section 234E(3) thus contemplates processing of the information furnished by the assessee/deductor u/s. 200(3). The same necessarily requires giving correct particulars thereof and, consequently, correction, where not so. Again, the obligation to pay as well as the right to take cognizance of the payment u/s. 234E(1), would necessarily require giving credit therefor and, consequently,

not giving credit therefor where not paid; or paid after the date of delivery of the statement; or though paid, remains to be communicated per the said statement, raising a demand in its respect in all such cases. The provision is to be read meaningfully and purposefully and, further, conjunctively, holistically, and in harmony with other provisions.

4.3 Put succinctly, the charge u/s. 234E is independent of the actual delivery of the statement u/s. 200(3), which is attracted once the statement to be delivered thereunder is not so done within the time prescribed therefor. Clauses (a) & (b) of s. 200A provide for making adjustments in the respect of tax deductible and interest thereon with reference to the information in the statement u/s. 200(3), providing for furnishing the details of the sum deducted and paid to the credit of the Central Government. The absence of a specific clause u/s. 200A for the fee u/s. 234E, as we understand, is, as the law, as envisaged, did not contemplate a difference; the parameters being clearly defined, in the sum payable u/s. 234E(1) and that paid thereunder. It is only on account of the fee payable with reference to the correction statements, obliged to be filed u/s. 200(3) w.e.f. 01/10/2014, that it perhaps became incumbent to clarify the same beyond doubt, as since done by introducing the processing thereof in s. 200A(1). We say so, even as it could be argued that a statement filed without paying the fee in full cannot, strictly speaking, be regarded as in compliance of s. 200(3) r/w s. 234E(3). Also, the processing of an incorrect statement would also be incorrect, which cannot be regarded as valid in law. This also explains the filing of the correction statement, as well as its processing, determining the fee with reference to the date of filing the corrected statement. This, again, supports our view of the processing of the correction statements in the instant cases, and the consequent intimations, as being only u/s. 200A(1)(c). The law, by requiring its payment prior to the delivery of the statement or even correction of particulars thereof, casts an obligation on the assessee to determine the levy and, thus, as a concomitant, on the AO to process

the same, generating the Intimation determining the amount, if any, payable by the assessee-deductor (collector), or even refundable to him in case of excess payment. Such a processing, prior to being specifically provided for u/s. 200A(1)(c), is to be read as u/s. 234E itself. The amendment per clause (c) to s. 200A(1) w.e.f. 01/6/2015 makes explicit what was implicit, and is thus clarificatory.

4.4 Finally, we may consider the aspect of judicial precedence, law on which is no longer *res integra*. As explained in *CIT vs. Thana Electricity Supply Ltd.* [1994] 206 ITR 727 (Bom), a decision of a High Court is not binding on other High Courts or Courts or Tribunals outside its territorial jurisdiction. The decision stands rendered after considering the decision in *CIT v. Godavari Devi Saraf* [1978] 113 ITR 589 (Bom), relied upon by the assessee before the first appellate authority. True, where there is no contrary decision, the same, having persuasive value, ought to be normally followed by the subordinate courts, even outside its territorial jurisdiction. We, rather, observe a number of decisions by other High Courts taking a view contrary to that expressed by the Hon'ble Karnataka & Kerala High Courts in *Fatheraj Singhvi & Ors.* (supra) and *Sarala Memorial Hospital* (supra) respectively, being canvassed by the assessee. Both these decisions are even otherwise by single Judge decisions as against by the Division Benches by the other High Courts, so that the same cannot be regarded as equivalent. In fact, on a perusal of the several decisions by the Tribunal placed on record by the assessee, we find decisions by these two High Courts as well taking a view similar to that by the majority of the High Courts. That is, there is, on the contrary, almost a unanimity of judicial view in favour of the applicability of the charge u/s. 234E(1) for the periods on or after 01/07/2012. Rather, as held by the Apex Court several times, as in *Virtual Soft Systems Ltd. v. CIT* [2007] 289 ITR 83 (SC), that it would be inclined under the circumstance of a predominant view by the High Courts to adopt a view consistent therewith. On the contrary, there may be circumstances where the decision by the non-jurisdictional High Court, even if it is

the sole decision on the point, may not be followed, as explained in *Rishi Roop Chemical Co. (P.) Ltd. vs. ITO* [1991] 36 ITD 35 (Del)(SB). Reference in this context be also made to the decision in *CIT v. Mirza Ataullah Baig & Anr.* [1993] 202 ITR 291 (Bom), subjecting the doctrine of beneficial interpretation to the existence of an ambiguity in law, which in fact, as explained time and again by the Apex Court, is the premise of this doctrine. We have already explained with reference to the binding decisions by the Apex Court that the machinery provisions are to be read in a manner so as to effectuate the legislative intent, making the charge effective. It is under the circumstances the view that appeals to judicial conscience of the subordinate court that would prevail (*Kenal Oil & Export Inds. v. Jt. CIT* [2009] 121 ITR 596 (Ahbd)(TM)), which we, for the detailed reasons stated hereinbefore, find to be that as expressed in the case of *Rajesh Kourani* (supra), the relevant part of which is reproduced hereunder:

‘19. In plain terms, section 200A of the Act is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments, which are, as noted earlier, arithmetical or *prima facie* in nature. With effect from 01.06.2015, this provision specifically provides for computing the fee payable under section 234E of the Act. *On the other hand, section 234E is a charging provision creating a charge for levying fee for certain defaults in filing the statements.* Under no circumstances a machinery provision can override or overrule a charging provision. We are unable to see that section 200A of the Act creates any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When section 234E has already created a charge for levying fee that (it) would thereafter not been necessary to have yet another provision creating the same charge. Viewing section 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision in our understanding is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under section 234E for late filing of the statements.

20. Even in absence of section 200A of the Act with introduction of section 234E, it was always open for the Revenue to demand and collect the fee for late filing of the statements. Section 200A would merely regulate the manner in which the computation of such fee would be made and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being found for (in) section 200A for computation of fee, the fee prescribed under section 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, the recasted clause (c) of subsection (1) of section 200A would be in nature of (a) clarificatory amendment. Even in absence of such provision, as noted, it was always open for the Revenue to charge the fee in terms of section 234E of the Act. By amendment, this adjustment was brought within the fold of section 200A of the Act. This would have one direct effect. An order passed under section 200A of the Act is rectifiable under section 154 of the Act and is also appealable under section 246A. In absence of the power of authority to make such adjustment under section 200A of the Act, any calculation of the fee would not partake the character of the intimation under said provision and it could be argued that such an order would not be open to any rectification or appeal. Upon introduction of the recasted clause (c), this situation also would be obviated. *Even prior to 01.06.2015, it was always open for the Revenue to calculate fee in terms of section 234E of the Act.* The Karnataka High Court in case of *Fatheraj Singhvi* (supra) held that section 200A was not merely a regulatory provision, but was conferring substantive power on the authority. The Court was also of the opinion that section 234E of the Act was in the nature of privilege to the defaulter if he fails to pay fees then he would be rid of rigor of the penal provision of section 271H of the Act. With both these propositions, with respect, we are unable to concur. *Section 200A is not a source of substantive power.* Substantive power to levy fee can be traced to section 234E of the Act. Further the fee under section 234E of the Act is not in lieu of the penalty of section 271H of the Act. Both are independent levies. Section 271H only provides that such penalty would not be levy if certain conditions are fulfilled. One of the conditions is that the tax with fee and interest is paid. The additional condition being that the statement is filed latest within one year from the due date.’ (emphasis, ours)

The difference in view of the Hon'ble Courts, i.e., considering so, is only in whether the charge u/s. 234E for period prior to 01/06/2015, is liable to be determined or not in the absence of a specific provision in its respect. The Hon'ble Courts are, in either case, in agreement on that the issue is as to the existence of the source of power before 01/6/2015. Whichever view one may take in the matter, there is no denying the fact that the AO's competence to issue show-cause as well as the order determining the amount u/s. 234E(1) r/w s. 234E(3). There is no reference to the assessment (this aspect) of the matter in the decisions cited, nor could Shri Chordia, on being so observed by the Bench during hearing, rebut it. This concludes our discussion in the matter of levy of fee u/s. 234E(1) in respect of statements delivered u/s. 200(3)/206C(3) after 01/7/2012 but before 01/6/2015. For statements furnished after 31/5/2015, any delay relating to the period after 30/6/2012, could be taken cognizance of.

5. *We may finally once again clarify that the discussion per paras 4.1 to 4.4 is only for the sake of completeness of this order and meet the arguments advanced before us, and without prejudice to our findings at para 3 (3.1 thro' 3.3) above.* The statement/s u/s. 200(3) having been filed in the instant case/s after 01/06/2015, its processing u/s. 200A(1)(c), determining the amount payable u/s. 234E, admits of no two views (s.200A(1)(d/e/f, as they stand w.e.f. 01/6/2015). The delay taken cognizance of, and with reference to which fee is levied, is in the instant cases covered by the period falling after 31/5/2015. In other words, the controversy arising due to the difference in the view of the Hon'ble Courts does not attend the instant case, so that the levy in the instant case admits of no two views. The same cannot therefore be regarded as debatable from any stand point, even as we have clarified our view even in case of periods falling after 30/6/2012. We, accordingly, uphold the levy. We decide accordingly.

6. In the result, the assessee's appeals are dismissed.

*Order pronounced in open Court on October 31, 2022*

Sd/-  
(Manomohan Das)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Dated: 31/10/2022

*vr/-*

Copy to:

1. The Appellants:

Madhyanchal Gramin Bank, Poddar Colony, Tili Road, Sagar

- |                                  |                         |
|----------------------------------|-------------------------|
| (i) Majhouli Branch              | (ii) Neguwan Branch     |
| (iii) Orchha Branch              | (iv) Rajapur Branch     |
| (v) Niwadi Branch                | (vi) Mohangarh Branch   |
| (vii) Chandra Branch             | (viii) Laron Branch     |
| (ix) Mandi Bamora Branch         | (x) Mahewa Branch       |
| (xi) Ranibaug Panna Branch       | (xii) Saleha Branch     |
| (xiii) Laundi Branch             | (xiv) Chhatarpur Branch |
| (xv) Tattam Branch               | (xvi) Maharajpur Branch |
| (xvii) Barigarh Branch           | (xviii) Gourihar Branch |
| (xix) Pipat Branch               | (xx) Kishangarh Branch  |
| (xxi) Buxwaha Branch             | (xxii) Mandi Road       |
| (xxiii) NowgongTendukheda Branch |                         |

2. The Respondents:

- (i) ITO (TDS)-1, Jabalpur  
(ii) ITO (TDS)-2, Jabalpur

3. CIT(A)-NFAC, Delhi.

4. The Sr.D.R., ITAT, Jabalpur.

5. Guard File.

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Jabalpur.