

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

Sl. No.	ITA No(s).	Name of Appellant	Name of Respondent	Asst. Year	Form & Quarter
1	283/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2013-14	26Q Q3
2	284/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2013-14	26Q Q4
3	285/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2015-16	26Q Q3
4	286/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2015-16	26Q Q4
5	287/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2015-16	24Q Q4
6	288/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q1
7	289/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q2

8	290/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q3
9	291/PUN/2023	Eagle Agro Farm Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE3848M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q3
10	292/PUN/2023	Eagle Agro Farm Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE3848M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q4
11	293/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2014-15	24Q Q4
12	294/PUN/2023	Eagle Flask Industries Pvt. Ltd. S.No.71, Eagle Estate, Talegaon Chakan Road, Pune - 410507 PAN: AAACE4197M	Dy.CIT, Circle-8, Pune	2014-15	26Q Q4

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 02-05-2023
घोषणा की तारीख / Date of Pronouncement : 03-05-2023

आदेश / ORDER

PER BENCH :

This batch of 12 appeals arise from different orders passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi on 23-01-2023 and 21-02-2023 dismissing all the appeals at the threshold on account of

delay in filing the first appeals ranging from minimum of 1973 days to maximum of 2881 days.

2. The moot point is as to whether such a long delay deserves condonation. At this stage, it is relevant to note the judgment of the Hon'ble High Court of Bombay in *Vijay Vishin Meghani Vs. DCIT & Anr (2017) 398 ITR 250 (Bom)* held that none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal. Similar to the cases under consideration, in that case too, delay of 2881 days crept in due to improper legal advice. The Hon'ble jurisdictional High Court condoned the delay by relying on the decision in the case of *Concord of India Ins. Co. Limited VS Nirmala Devi (1979) 118 ITR 507 (SC)*,.

3. In another decision in the case of *Anil Kumar Nehru and Another vs. ACIT (2017) 98 CCH 0469 Bom HC*, there was a delay of 1662 days in filing the appeal. Such a delay was not condoned by the Hon'ble High Court. In further appeal, condoning the delay, the Hon'ble Supreme Court in *Anil Kumar Nehru vs. ACIT (2018) 103 CCH 0231 ISCC*, held that : `It is a matter of record that on the identical issue raised by the appellant in respect of earlier assessment, the appeal is pending before the High Court. In these circumstances, the High Court should not have taken such a technical view of dismissing the appeal in the instant case on the ground of delay, *when it has to decide the question of law between the parties in any case* in respect of earlier assessment year.

4. Turning to the facts of the instant appeals, we find that the legal issue raised by the assessee is squarely covered in assessee's favour for the aforesaid judgments of the Hon'ble Jurisdictional High Court, Kerala High Court and several orders passed by the Pune Benches of the Tribunal on this score. As against the situation in *Anil Kumar Nehru (SC)* in which the question of law was yet to be decided, we are confronted with a situation in which the question of law involved in the present set of appeals has already been decided in favour of the assessee. Under these circumstances, we condone the delay crept before the Id. CIT(A).

5. The issue raised in all these appeals is charging of interest u/s.234E in respect of above mentioned Quarters of the assessment years.

6. Briefly stated, the facts of the case are that the assessee is engaged in the business of manufacture and sale of Thermowares. The TDS returns for the respective quarters were filed belatedly. Based on that, the Assessing Officer (AO) levied late fees u/s.234E of the Income-tax Act, 1961 (hereinafter also called 'the Act'). The assessee approached the Id. CIT(A) belatedly against the waiver of such fee. Since the appeals were time barred, the Id. CIT(A) did not condone the delay and dismissed them *in limine*.

7. We have heard the rival submissions and gone through the relevant material on record. It is seen that fee u/s.234E has been imposed by the AO for belated filing of the relevant statements. The assessment years involved in these 12 appeals are 2013-14, 2014-15 and 2015-16, which

shows that the fee u/s.234E has been imposed for the delay in furnishing the statements for quarters prior to 01-06-2015.

8. Section 200A deals with processing of statements of tax deducted at source. Clause (c) of section 200A(1) was inserted by the Finance Act, 2015 w.e.f. 01-06-2015 providing for the levy of fee u/s.234E of the Act. In that view of the matter, such fee u/s.234E can be levied only for the default committed after 01-06-2015 and not prior to that. The Hon'ble Kerala High Court in *Olari Little Flower Kuries Pvt. Ltd. Vs. Union of India and others (2022) 440 ITR 26 (Kerala)* has affirmed the non-imposition of fee for the period prior to 01-06-2015. Similar view has been taken in *Jiji Varghese VS. ITO (TDS) & Ors. (2022) 443 ITR 267 (Ker)* holding that no interest u/s 234E can be imposed for the periods of the respective A.Ys. prior to June 1, 2015. Thus, the order of NFAC, Delhi is not justified in confirming the levy of fee u/s 234E of the Act and it is set aside. Grounds raised by the assessee are allowed.

9. In the result, all the appeals are allowed.

Order pronounced in the open court on 3rd May, 2023.

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

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 03rd May, 2023.
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune