

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

Sl. No	ITA.No.	Quarter No.	F.Y./ A.Y.	Assessee/ Appellant	Dept./ Respondent	Order Appealed against NFAC, Delhi DINs & Orders Nos. ITBA/NFAC/S/ 250/2022-23/	Proceedings u/sec.
1.	617/PUN./2023	Q-2	2015-16/ 2016-17	Arty Static WKSP EME, Deolali, Contonment Board, Nashik, Maharashtra PAN AAALA2028G	The ACIT, CPC-TDS, Income Tax Office, Ward-6(1), Nashik. Maharashtra PIN 422001	1048696115(1) Dt.13.01.2023	200A of the Income Tax Act, 1961 (in short "the Act").
2.	618/PUN./2023	Q-3				1048696188(1) Dt.Dt.13.01.2023	
3.	619/PUN./2023	Q-4				1050086664(1) Dt.24.02.2023	
4.	620/PUN./2023	Q-1	2016-17/ 2017-18	Income Tax Office, Ward-6(1), Nashik. Maharashtra PIN 422001	1048696390(1) Dt.13.01.2023		
5.	621/PUN./2023	Q-2			1048696490(1) Dt.13.01.2023		
6.	622/PUN./2023	Q-3			1050086465(1) Dt.24.02.2023		
7.	623/PUN./2023	Q-4			1050087116(1) Dt.24.02.2023		
8.	624/PUN./2023	Q-1	2017-18/ 2018-19	Income Tax Office, Ward-6(1), Nashik. Maharashtra PIN 422001	1048696570(1) Dt.13.01.2023		
9.	625/PUN./2023	Q-2			1048696644(1) Dt.13.01.2023		
10.	626/PUN./2023	Q-3			1048696773(1) Dt.13.01.2023		
11.	627/PUN./2023	Q-4			1048696878(1) Dt.13.01.2023		

For Assessee :	Shri Pramod S. Shingte
For Revenue :	Shri Ramnath Murkude

Date of Hearing :	11.07.2023
Date of Pronouncement :	17.07.2023

ORDER

PER BENCH :

The instant batch of eleven appeals pertains to a single assessee viz., Arty Static WKSP EME, Deolali. All the other relevant particulars stand duly tabulated hereinabove.

Heard both the parties at length. Case files perused.

2. It emerges during the course of hearing that the assessee's identical substantive grievance in all of these

instant appeals challenges correctness of both the learned lower authorities' action levying late filing fee u/sec.200A r.w.s. 234E of the Act, in light of corresponding statutory amendment applicable w.e.f. 01.06.2015.

3. Mr. Murkude invited our attention to the CIT(A)'s identical detailed discussion affirming the impugned levy as as under :

4. The appellant has taken up 4 grounds of appeal but they are interrelated and pertain to the AO's action in passing order u/s 200A/206CB of the Act and creation of total demand of Rs. 38,090/- on account of short deduction, interest on short deduction and late filing fee u/s 234E of the Act. However, the appellant has only challenged the late filing fee u/s. 234E of the Act amounting to Rs. 11,200/-.

5. The facts of the case, in brief, are that the appellant is a Government entity (INDIAN ARMY). The AO noticed that the appellant filed its TDS statement in Form 24Q for 4th Quarter of the FY 2017-18 mentioned which was not within stipulated time as per TDS provisions. Accordingly, the AO passed order u/s 200A/206CB of the Act dated 02-08-2019 thereby creating total demand of Rs. 38,090/- on account of short deduction, interest on short deduction and late filing fee u/s 234E of the Act. However, the appellant has only challenged the late filing fee u/s. 234E of the Act amounting to Rs. 11,200/- as mentioned in Para 4 above. Aggrieved, the appellant filed the present appeal.

6. The only issue is to be decided in the present appeal is whether the AO was justified in passing order u/s 200A/206CB of the Act and creating demand of Rs. 11,200/- created on account of late filing fee u/s. 234E of the Act in respect of 4th Quarter of the FY 2017-18.

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7. As mentioned above in para 2, the appellant failed to furnish any written submissions in support of the grounds taken in appeal. However, in the statements of facts, the appellant has submitted as under:-

Artillery Static Workshop, Devlali is functioning under Peace Establishment VI/196/1946/13 issued vide IHQ of MoD (Army) (SD 6) letter No 92266/GS/SD 6 dt 04 December 2018. The role of the workshop is as given below:

(a) To provide light and field repair cover to vehicles and equipments of the units located in the station and nearby.

(b) To repair field repair cover to vehicles and equipments of co opted units of School of Artillery in the station. Since introduction of Tax Deduction Account Number (TAN) as per Income Tax Act 1961, it is the responsibility of Drawing and Disbursing Officer to deduct the Income Tax of all employees and submit the vouchers to Principal Controller of Defence Accounts, Pune. Simultaneously Principal Controller of Defence Accounts deposit the amount to the Government and intimate Book Identification Numbers to the units as intimated vide their letter No IT/Cell/EDP/2013 14 dt 10 April 2013 attached at Appendix A. As per para 3 of Principal Controller of Defence Accounts letter ibid, the unit concerned being Drawing and Disbursing Officer (DDO) has to file Quarterly e TDS i.e. Form No 24Q to the Income Tax Department through NSDL on receipt of Book Identification Numbers from Principal Controller of Defence Accounts, Pune. Several correspondences from January 2012 to July 2014 were made with Principal Controller of Defence Accounts, Pune to intimate the Book Identification Number details. However, Principal Controller of Defence Accounts, Pune had failed to intimate the Book Identification Number details on all occasions. As such Artillery Static Workshop was unable to file the e TDS returns i.e., Form No 24Q the Income Tax Department through NSDL, resulting in no transaction of Income Tax recovery which has been shown against Permanent Account Numbers (PAN) of employees of Artillery Static Workshop since 2013. Income Tax Department have issued notices to the employees of Artillery Static Workshop and asked to produce Form No 26AS to settle the queries. However, Artillery Static Workshop was unable to produce Form No 26AS as e TDS Statements had not been filled due to non receipt of Book Identification Number details. In the meantime, Income Tax from all affected employees has correctly been recovered and deposited to the Government. Details of amount deposited for FY 2013 14, 2014 15, 2015

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16 and 2017 18 reflecting the amount matched are attached at Appendix B to E respectively. Details of schedules of employees whose tax has been deducted and deposited to the Govt on monthly basis are attached at Annexures to the respective Appendix. Through personal visit and liaison, the Book Identification Numbers along with the details of amount deposited were finally obtained from Principal Controller of Defence Accounts in July 2018, and subsequently the TDS Returns have been filed for the Financial Year 2013 14, 2014 15, 2015 16 and 2017 Immediately on uploading the files of the TDS for these years, Income Tax Department, Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik has served us demand notice for Rs 16,01,470/- towards penalty charges for late filing and asked to deposit the amount immediately or otherwise Drawing and Disbursing Officers bank account will be attached for recovery of penalty charges. It is proposed that demand notice for Rs 16,01,470/- (Rupees Sixteen lakh one thousand four hundreds eighty only) issued by Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik, be waived off under the Income Tax Rule 273A (2) (b) as Income Tax has correctly been recovered from all affected employees and deposited to the Government. However, the TDS could not be filed due to non availability of Book Identification Numbers until 2017 18. After 2017 18 Artillery Static Workshop has religiously filed the TDS for all preceding Financial Years. Thus, the error was due to omission and not due to commission in the procedures. As per para 273A (2) (b) of Income Tax Rule (copy attached at Appendix F), the sanction to waive off the penalty is to be approved by Chief Commissioner or Director General as the case may be. Hence, considering the initiative of the unit and willful intent to abide by the laid down rules and regulations, sanction of appropriate authority be given to waive off the penalty charges levied by Income Tax Office (TDS), Kendriya Rajaswa Bhawan Gadkari Chowk, Nashik. Artillery Static Workshop. Devlali is functioning under Peace Establishment VI 196/ 1946/13 issued vide IHQ of MoD (Army) (SD 6) letter No 92266/GS/ SD 6 dt 04 December 2018. The role of the workshop is as given below:

To provide light and field repair cover to vehicles and equipments of the units located in the station and nearby. To repair field repair cover to vehicles and equipments of co opted units of School of Artillery in the station. Since introduction of Tax Deduction Account Number (TAN) as per Income Tax Act 1961, it is the responsibility of Drawing and Disbursing Officer to deduct the Income Tax of all employees and submit the vouchers to Principal Controller of Defence Accounts, Pune. Simultaneously Principal Controller of Defence Accounts deposit the

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amount to the Government and intimate Book Identification Numbers to the units as intimated vide their letter No IT/Cell/EDP/2 013 14 dt 10 April 2013. As per para 3 of Principal Controller of Defence Accounts letter ibid, the unit concerned being Drawing and Disbursing Officer (DDO) has to file Quarterly eTDS i.e. Form No 24Q to the Income Tax Office (TDS), Kendriya Rajaswa Bhawan Gadkari Chowk, Nashik through NSDL on receipt of Book Identification Numbers from Principal Controller of Defence Accounts, Pune. Several correspondences from January 2012 to July 2014 was made with Principal Controller of Defence Accounts, Pune to intimate the Book Identification Number details. However, Principal Controller of Defence Accounts, Pune had failed to intimate the Book Identification Number details on all occasions. As such Artillery Static Workshop was unable to file the e TDS i.e. Form No 24Q to the Income Tax Department through NSDL, resulting in no transaction of Income Tax recovery which has been shown against Permanent Account Numbers (PAN) of employees of Artillery Static Workshop since 2013. Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik have issued notices to the employees of Artillery Static Workshop and asked to produce Form No 26AS to settle the queries. However, Artillery Static Workshop was unable to produce Form No 26AS as e TDS had not been filled due to non receipt of Book Identification Number details. Simultaneously, the Income Tax from all affected employees has correctly been recovered and deposited as brought out at para 5 above. Through personal visit and discussion, the Book Identification Numbers along with the details of amount deposited were obtained from Principal Controller of Defence Accounts in July 2018, and subsequently e TDS have been filled for the Financial Year 2013 14, 2014 15, 2015 16 and 2017 18. Immediately on uploading the files of e TDS for these years, Income Tax Office (TDS), Kendriya Rajaswa Bhawan Gadkari Chowk, Nashik has served demand notice for Rs 16,01,470/- towards penalty charges for late filing and asked to deposit the amount immediately otherwise Drawing and Disbursing Officers bank account will be attached for recovery of penalty charges. The demand notice for Rs 16,01,470/- (Rupees Sixteen lakh one thousand four hundred seventy only) issued by Income Tax Department, Gadkari Chowk, Nashik be waived off as Income Tax has correctly been recovered from all affected employees and deposited to the Government and there is no wilful intention of the omission. However, e TDS could not be filled due to non availability of Book Identification Numbers until 2017 18, After which Artillery Static Workshop has religiously filed e TDS for all preceding financial years. This error was due to omission and not due to


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commission in the procedures. As per para 273A (2) (b) of Income Tax Rule, the sanction to waive off the penalty is to be approved by Chief Commissioner or Director General as the case may be. Hence, considering the initiative of the unit and wilful intent to abide by the laid down rules and regulations, sanction of appropriate authority be given to waive off the penalty charges levied by Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik. There will be no financial effect to the Revenue as the Income Tax has already been recovered from all affected employees and deposited to the Government. Artillery Static Workshop is functioning under revised Peace Establishment issued vide IHQ of MoD (Army) (SD 6) letter No 92266/GS/SD 6 dt 19 January 2018. There are 121 civilian employees authorised to Artillery Static Workshop as per existing Peace Establishment. The demand notice for Rs 16,01,470/ (Rupees Sixteen lakh one thousand four hundred seventy only) issued by Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik, be waived off as Income Tax has correctly been recovered from all affected employees and deposited to the Government. However, the TDS could not be filed due to non availability of Book Identification Numbers until 2017-18. After which Artillery Static Workshop has religiously filed the TDS for all preceding financial years. This error was due to omission and not due to commission in the procedures. As per para 273A (2) (b) of Income Tax Rule, the sanction to waive off the penalty is to be approved by Chief Commissioner or Director General as the case may be. Hence, considering the initiative of the unit and wilful intent to abide by the laid down rules and regulations, sanction of appropriate authority be given to waive off the penalty charges levied by Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik. RECOMMENDATIONS OF COMMANDANT ARTILLERY STATIC WORKSHOP ON STATEMENT OF CASE FOR WAIVING OFF THE LATE FILING FEES OF THE TDS CHARGED BY INCOME TAX OFFICE, NASHIK. It is recommended that as per para 273A (2) (b) of Income Tax Rule, the sanction to waive off the penalty is to be approved by Chief Commissioner or Director General as the case may be. Hence, considering the initiative of the unit and wilful intent to abide by the laid down rules and regulations, sanction of appropriate authority be given to waive off the penalty charges levied by Income Tax Office (TDS), Kendriya Rajaswa Bhawan, Gadkari Chowk, Nashik. As non filing of the TDS was purely due to non availability of Book Identification Numbers. On availability of the Book Identification Numbers, the TDS have been filed which shows the wilful intent to abide by the laid down rules and regulations and oversight in the past is due to omission

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and not due to purposeful commission."

8. I have carefully considered the order u/s 200A/206CB of the Act. The only issue to be decided in this case is whether the late filing fee u/s 234E can be levied while passing intimation u/s 200A post amendment to this section vide Finance Act, 2015. The validity of sec. 234E was examined by the Hon'ble Bombay High Court in the case of Rashmikant Kundalia & another vs. UOI reported in 92 CCH 0037 Mum HC and it was concluded by the Hon'ble Court that "we are of the clear view that Section 234E of the Income Tax Act, 1961 does not violate any provision of the Constitution and is therefore intra vires, Constitution of India." Thus, no question remains about the validity of sec. 234E. Subsequently, following the ratio laid down by the Hon'ble Bombay High Court and various other Courts, the Hon'ble Rajasthan High Court in the D.B. Civil Writ Petition No. 8672/2014 in the case of M/s. Dundlod Shikshan Sansthan and another. V/s. Union of India and others upheld the constitutional validity of sec. 234E of the Act.

The Hon'ble Kerala High Court in the case of Narayan Guru Smaraka Sangam Upper Primary School, vs. UIO and others [WP © 30229 of 2013 (C)], vide order dated 14-12-2016 discussed the issue in detail and considered all the relevant decisions on this issue and concluded as under:-

"22. There cannot be any dispute regarding the legal proposition evolved in the matter as held by the Apex Court in Dewan Chand Builders (supra) and the Constitution Bench judgment relied upon in this case. The proposition is rather clear that in order to levy a fee, there has to be an element quid pro quo. What exactly is the quid pro quo for levying a fee arises for consideration. In the Explanatory Note and in the counter affidavit filed, the Central Government had taken a view that delay in filing statement of TDS is causing substantial inconvenience to deductees as the department is not in a position to finalise the tax returns in time and to refund the amount payable to such deductees. On a perusal of the judgment of the Bombay High Court, which is relied upon by the other High Courts, it could be seen that a similar question was considered by the Bombay High Court and it was held that by the late filing of TDS return/ statements is regularised upon payment of the fee as set out in section 234E is nothing but a privilege and a special service to the deductor allowing him to file the TDS return/ statement W.P(C) No.30229/13 & connected cases beyond the time prescribed by the Act or the Rules. Hence, it was held that there is an element of quid pro quo for collecting the fee.

23. The main contention of the petitioner is based on the memorandum explaining amendment moved in the Finance Bill, 2012, wherein it is indicated that the provision had been incorporated as a deterrence to the deductors who delays in furnishing TDS statement in time. While considering the validity of a statute, I do not think that the exact

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words of the Explanatory Note can have any relevance. It has to be verified whether the fee that is being charged is in the form of a penalty so that an opportunity should be given to the deductor to explain the reasons for delay before imposing such fee/penalty.

24. As already held by the Bombay High Court in *Rashmikant Kundalia* (supra), "undoubtedly, delay in furnishing of TDS return/statements has a cascading effect. Under the Income Tax Act, there is an obligation on the Income Tax Department to process the income tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deductions is furnished by the deductor within the prescribed time." The Bombay High Court has thereafter elaborated the consequences of delay in filing the statement. It is on account of the additional work burden which has fallen upon the department due to the fault of the deductor that a fee has been levied. I do not think that a different view can be taken in the matter.

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26. Section 200A amended by the Finance Act, 2015 incorporating clause (c) and an order passed Section 200A is made appealable under Section 246A. This benefit of appeal is available only after the commencement of Finance Act 2015. In the judgment of the Rajasthan High Court, reference is also made to the amendment to Section 200A that there was no provision for appeal earlier against collection of fee under Section 234E. But as per the amendment made to the Finance Act 2015, with effect from 01.06.2015, a provision for appeal has been inserted under Section 246A against an order under sub-section (1) of Section 200A. Since the appellate remedy has already been provided, the petitioner cannot contend that the impugned provision of the Act is unreasonable and arbitrary."

Further, I find no force in the argument that the delay is only technical as tax was deducted and deposited in time and there was no loss of revenue, in the light of judgment of Hon'ble High Court in the case of *Rashmikant Kundalia* (supra), wherein it was held that "undoubtedly, delay in furnishing of TDS return/statements has a cascading effect, Under the Income Tax Act, there is an obligation on the Income Tax Department to process the income tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deduction is furnished the deductor within the prescribed time." Here it would be imperative to refer to the provisions of sec. 234E which reads as under:-

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"234-E. Fee for default 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 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.

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(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."

Upon bare perusal of sec. 234E, it is clear that a fee is sought to be levied inter alia on a person who fails to deliver or cause to be delivered the TDS return/statements within the prescribed time as per sub-section (3) of section 200. The fee prescribed is Rs. 200/- for every day during which the failure continues. Sub-section (2) further stipulates that 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. It is on account of the additional work burden which has fallen upon the department due to the fault of the deductor that a fee has been levied. As discussed above, neither of the above cited decisions, held that no late filing fee can be levied where there was delay on the part of the deductee to filing the TDS/TCS return within stipulated time period.

Furthermore, 234E(3) uses the word "shall", which clearly states that the duty is cast upon the deductor to pay the fee prescribed "before" the statement is delivered. Thus, it is clear that there is no scope for the appellant to take ground that once its statement has been delivered he stands absolved of the payment of fee as prescribed u/s. 234E.

From the facts as discussed above and ratio which emerges from the decisions cited (supra), it is clear that there is no doubt about the validity of sec. 234E as this section was held constitutionally valid. It is now obvious that prior to 01-06-2015, there was no enabling provision in sec. 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 late filing fee u/s 234E of the Act. Thus, the AO cannot make any adjustment other than the ones prescribed

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above in Sec. 200A of the Act. After amendment, the AO can make adjustment by levying late filing fee u/s 234E of the Act w.e.f. 01-06-2015 even while processing the statement under Section 200A. **In the instant case, the late filing fee u/s 234E relates to 4th Quarter of FY 2017-18 (AY 2018-19) which was levied by intimation u/s 200A/206CB dated 02-08-2018 i.e. after the amendment in Sec. 200A.**

Considering the factual and legal position as discussed above, the late filing fee u/s 234E of the Act imposed at Rs. 11,200/- is sustained. The grounds raised by the appellant regarding this issue are **dismissed**.

4. We have given our thoughtful consideration to the vehement rival submissions against and in support of the correctness of the CIT(A)'s identical lower appellate detailed discussion. We make it clear that there is no dispute between the parties about the settled legal position in principle regarding the applicability of the amended provision for the purpose of levying late filing fee u/sec.234E of the Act. The assessee's stand all along in the instant batch of eleven appeals is that it was prevented by reasons beyond its control so as to comply with the corresponding provisions in all these quarters involving various assessment years.

5. Mr. Shingte took us to the assessee's pleadings in its written submissions filed before the learned CIT(A) that the sole reason herein leading to the assessee's non-compliance is the fact that it is a government office [Ministry of Defence] wherein the corresponding book identification numbers "BIN" could not be generated at the end of Principal Controller of Defence Accounts. Mr. Murkunde could hardly dispute that this clinching reason has nowhere been considered in the

CIT(A)'s detailed discussion in light of relevant material on record. Faced with the situation, we deem it appropriate to restore all these assessee's eleven appeals back to the CIT(A) for his afresh appropriate adjudication as per law, preferably within three effective opportunities of hearing, subject to the condition that the assessee shall file all the relevant details as per law before him. Ordered accordingly.

6. There is a delay of 52 days in filing the instant appeals before the tribunal and the assessee-appellant filed an affidavit explaining reasons thereof. Hon'ble apex court's landmark decision Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) has settled the law long back that all such technical aspects must make way for the cause of substantial justice. We, therefore, condone the impugned delay and take-up the instant appeals for adjudication on merits.

No other ground or argument has been pressed before us.

7. These assessee's eleven appeals are allowed for statistical purposes. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 17.07.2023.

Sd/-
[G.D. PADMAHSHALI]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 17th July, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The NFAC, Delhi
4.	The CCIT, Pune
5.	D.R. ITAT, Pune A-Bench, Pune
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.