

**आयकरअपीलीयअधिकरण, विशाखापटणम "एसएमसी"पीठ, विशाखापटणम**

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष  
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER**

**आयकर अपील सं./I.T.A.No.149/Viz/2023 & 150/Viz/2023  
(निर्धारण वर्ष / Assessment Year : 2014-15 & 2015-16)**

Government Polytechnic  
Government Polytechnic College  
Kancharapalem  
Visakhapatnam  
**[PAN : AAAGG1122Q]**

Vs. Income Tax Officer (TDS)  
Ward-1  
Visakhapatnam

**(अपीलार्थी/ Appellant)**

**(प्रत्यर्थी/ Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR  
: Shri Madhukar Aves, DR

सुनवाई की तारीख / Date of Hearing

: 13.09.2023

घोषणा की तारीख/Date of Pronouncement

: 27.09.2023

**आदेश / O R D E R**

**Per Shri Duvvuru RL Reddy, Judicial Member :**

These appeals are filed by the assessee against the orders of Commissioner of Income Tax (Appeals) [CIT(A)], National Faceless Appeal Centre (NFAC), Delhi vide DIN & Order No.ITBA/NFAC/S/250/2022-23/1050621770(1) and No.ITBA/NFAC/S/250/2022-23/1050621696(1) dated 10.03.2023, arising out of order issued by Income Tax Officer, TDS, Ward-1, Visakhapatnam passed u/s 154 of the Income Tax Act, 1961 (in short 'Act') for the Assessment Year

(A.Y.) 2014-15 and 2015-16 respectively. Since the issues involved in these appeals are identical, these appeals are clubbed, heard together and a consolidated order is being passed for the sake of convenience as under. Facts are extracted from 149/Viz/2023, A.Y.2014-15.

2. Brief facts of the case are that the assessee is a State Government run Polytechnic College imparting technical education to students. The institution has been filing quarterly returns and filed TDS quarterly statement for all the quarters of F.Y.2013-14. The assessee had received a notice from the AO, citing demands on various counts which included late filing fee amounting to Rs.2,30,600/- for delay in filing of quarterly TDS statement, citing that, as per provisions of sec.234E of the Act, if a person fails to deliver or cause to be delivered a statement within the prescribed time period then he shall be liable to pay late fee at Rs.200/- per day before filing the TDS statement. The assessee filed a rectification petition u/s 154 before the jurisdictional AO, citing various legal precedents against the levy of fee u/s 234E prior to 01.06.2015, but the rectification petition for waiver off of late fee u/s 234E was rejected by the Ld.jurisdictional Income Tax Officer, TDS, Ward-1, Visakhapatnam vide letter dated 30.12.2020, stating that as per provisions of section 234E of the Act, there is no scope for waiver off of late fee u/s 234E.

3. Aggrieved by the letter of the Ld. ITO dated 30.12.2020, the assessee preferred an appeal before the Ld. CIT(A) and contested the denial of the waiver off of late fee by the Ld. ITO, TDS, Ward-1, Visakhapatnam. The Ld. CIT(A) dismissed the appeal of the assessee as non-maintainable, as the assessee filed appeal against the letter for waiving off of late filing fee and not against the order for levying of penalty u/s 234E of the Act. The Ld. CIT(A) also observed that as per the provisions of section 246 of the Act, an appeal can be filed against assessment, penalty order or against intimation, however, the instant appeal is filed against letter denying the waiver of late filing fees and directing the assessee to pay the outstanding demand. The Ld. CIT(A) while dismissing the appeal held that the grounds of appeal being agitated are primarily directed against the order 200A/234E, wherein, penalty / late filing fee was levied, whereas, the appeal is filed against the letter dated 30.12.2020 issued by the ITO (TDS), Ward-1, Visakhapatnam. The Ld. CIT(A) further observed that the appeal has to be filed separately against each Form / Quarter, but the assessee filed appeal against Quarter 4 of F.Y.2013-14 for Form 24Q and 26Q.

4. Aggrieved by the order of the Ld. CIT(A), the assessee preferred an appeal before the Tribunal by raising the following grounds of appeal :

1. *The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appeal as non-maintainable and ought to have adjudicated the appeal on merits of the case.*
3. *The learned Commissioner of Income Tax (Appeals) ought to held that levy of late filing fee u/s 234E of the Act for the F.Y.2013-14 vide the Intimations u/s 200A of the Act passed as under is not in accordance with law.*

<i>Quarter</i>	<i>Late filing fee u/s 234E of the Act</i>
<i>Q4(24Q)</i>	<i>15,400</i>
<i>Q4(26Q)</i>	<i>2,15,200</i>
<i>Total</i>	<i>2,30,600</i>

4. *Any other ground that may be urged at the time of hearing of appeal.*
5. At the outset, the Ld.AR submitted that the assessee on receiving the intimation of outstanding demand, responded immediately and filed a petition u/s 254 dated 21.12.2020, seeking waiver of late fee raised u/s 234E. But the Ld.ITO (TDS), Ward-1, Visakhapatnam vide letter dated 30.12.2020 rejected the petition filed by the assessee u/s 154, stating that there is no scope for waiver off of late fee u/s 234E. Therefore, the assessee filed an appeal before the Ld.CIT(A) against the letter issued by the Ld.ITO(TDS), Ward-1, Visakhapatnam. The Ld.AR further submitted that the section 200A which came into effect from 01.06.2015 and certain

new clauses (c) & (d) were inserted in section 200A of the Act. He further contended that prior to the amendment u/s 200A of the Act w.e.f. 01.06.2015, levy of fee u/s 234E was not tenable. The Ld.AR submitted that the Ld.Revenue Authorities erred in levying the late filing fee and on appeal, the Ld.CIT(A) ought to have deleted the demand of late filing fee. The Ld.AR pleaded that the entire demand of late filing fee u/s 234E and interest levied u/s 220(2) may be deleted.

6. On the other hand, the Ld.DR heavily relied on the order of the Ld.CIT(A) and pleaded to uphold the same.

7. I have heard both the parties and perused the material available on record. It is undisputed fact that the assessee had filed TDS return belatedly for the respective quarters of the impugned assessment year under consideration which was processed u/s 200A of the Act and a demand was raised towards late filing fee U/s. 234E of the Act. Later on, the assessee filed a letter dated 21.12.2020, seeking waive-off of late fee and rectification u/s. 154 before the Ld. AO. The Ld. AO did not pass any rectification order since it is not a petition u/s. 154. However, the Ld. ITO (TDS), Ward-1, Visakhapatnam responded to the assessee's letter stating that the waive-off of the late filing fee is out of his scope. In my view the

assessee ought to have filed a petition seeking rectification of the order passed by the Ld. AO instead of filing a letter. However, the assessee filed an appeal based on the letter issued by the Ld. ITO (TDS), Ward-1, Visakhapatnam instead of filing the appeal against the intimation. Considering these facts and circumstances of the case, the Ld. CIT(A), following the provisions of section 246A of the Income Tax Act, 1961 dismissed the appeal of the assessee as the same is not a maintainable appeal. The decision of the Ld.CIT (A) is given in para 3.5 of his order and it is extracted herein below for reference:

*“3.5. In view of the facts and circumstances of the case, the present appeal is not maintainable. Section 246A of the Income Tax Act, 1961 which provides the following orders / intimations against which the assessee may appeal to the Commissioner (Appeals) :-*

*“(a) [ an order passed by a Joint Commissioner under clause(ii) of sub-section (3) of section 115VP or] an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub section (1B) of [section 143 or [sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 [except an order passed in pursuance of directions of the Dispute Resolution Panel][or an order referred to in sub-section (12) of section 144BA] or section 144, to the income assessed, or to the amount of tax determined or to the amount of loss computed, or to the status under which he is assessed.....”*

*From the above, it is clear that the appeal has to be filed separately against each Form/ Quarter. As facts brought out in the para 3.2, this appeal has been filed against two separate Form / Quarter. Hence, the appeal filed is found to be non-maintainable. However, appellants are free to file fresh appeal as per law and due procedure.*

8. In this situation, we find it relevant to extract the provisions of section 246A of the Act which reads as under:

*'246A. Appealable orders before Commissioner (Appeals).— 1) Any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against—*

*(a) an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or subsection (1B) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;*

*(b) an order of assessment, re-assessment or re-computation under section 147 or section 150;*

*(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections;*

*(d) an order made under section 163 treating the assessee as the agent of a non-resident; (e) an order made under sub-section (2) or sub-section (3) of section 170;*

*(f) an order made under section 171;*

*(g) an order made under clause (B) of sub-section (1) or under sub-section (2) or sub-section (3) or sub-section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;*

*(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992 or any earlier assessment year;*

*(i) an order made under section 237;*

*(j) an order imposing a penalty under— (A) section 221; or (B) section 271, section 271A, section 271F, section 272AA or section 272BB; (C) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of an assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;*

*(k) an order of assessment made by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of*

*account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;*

*(l) an order imposing a penalty under sub-section (2) of section 158BFA;*

*(m) an order imposing penalty under section 271B or section 271BB;*

*(n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271D or section 271E;*

*(o) an order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A;*

*(p) an order made by a Deputy Commissioner imposing a penalty under section 272AA; (q) an order imposing a penalty under Chapter XXI;*

*(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.*

*Explanation—For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as Joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.*

*(2) Notwithstanding anything contained in sub-section (1) of section 246, every appeal under this Act which is pending immediately before the appointed day, before the Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeals and which is so pending shall stand transferred on that date to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day:*

*Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.*

*Explanation.—For the purposes of this section, "appointed day" means the day appointed by the Central Government by notification in the Official Gazette.'*

9. A plain reading of the above section and applying the same to the facts of the instant appeal, one can clearly understand that the letter issued by the Ld. ITO, Ward-1, Visakhapatnam dated 30.12.2020 is

nothing but a response to the letter filed by the assessee seeking waiver off of late filing fee imposed by the Ld. AO. Therefore, it is not an appealable order before the Appellate Authorities as described in the provisions of the Act. Considering this fact and following the provisions of the Act, the Ld. CIT(A) has rightly concluded that the grounds of appeal raised by the assessee cannot be adjudicated on merits, since, the appeal itself is not maintainable and therefore dismissed in limine. Considering the above facts and circumstances of the instant case, I have no hesitation to come to a conclusion that the Ld. CIT(A)'s order holds good, as there is no infirmity in the order of the Ld. CIT(A) and accordingly no interference is required. It is ordered accordingly.

10. In the result, appeal filed by the assessee in ITA No.149/Viz/2023 for the A.Y.2014-15 is dismissed. With respect to ITA No.150/Viz/2023 for the A.Y. 2015-16, since the grounds of appeal raised by the assessee in these appeals as well as the facts and circumstances of the case are similar to that of the ITA No.149/Viz/2023, AY 2014-15, which is adjudicated by me in the above paragraphs of this order, my decision given thereon *mutatis mutandis* applies to ITA No. 150/Viz/2023, A.Y.2015-16 also. Accordingly, both the appeals in ITA Nos.149 /Viz/2023 and 150/Viz/2023 filed by the assessee are dismissed.

11. In the result, appeals filed by the assessee are dismissed.

Order pronounced in the open court on 27<sup>th</sup> September, 2023.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 27.09.2023

L.Rama, SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- Government Polytechnic, Government Polytechnic College, Kancharapalem, Visakhapatnam
2. राजस्व/The Revenue - The Income Tax Officer (TDS), Ward-1, Aayakar Bhavan, Dabagardens, Visakhapatnam
3. The Principal Commissioner of Income Tax, Visakhapatnam
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 5..गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam