

**।आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA Nos.929, 930 & 931/PUN/2023
निर्धारण वर्ष / Assessment Years : 2013-14, 2014-15 & 2015-16**

Padmakar Vishwas Date, S.No.218, Near Shri Krishn Mandir, Alandi Road, Bhosari, Pune – 411038. PAN: ANHPD3804B	V s	The Income Tax Officer –TDS(2), Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	None
Revenue by	Shri Sourabh Nayak – Addl.CIT(DR)
Date of hearing	15/02/2024
Date of pronouncement	16/02/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These three appeals filed by the assessee are against the separate orders of Ld.Commissioner of Income Tax(Appeals)[NFAC], passed under section 250 of the Income Tax Act, 1961 all dated 26.06.2023. Since issue involved is same, all these appeals were heard together and decided by this consolidated order. We treat appeal in ITA No.929/PUN/2023 for A.Y.2013-14

as a lead case. The assessee for A.Y.2013-14 has raised the following grounds of appeal :

1. *The provisions of section 234E came into force for periods after 01.06.2015 and they were not applicable to periods prior to that date.*
2. *The Appellant was not able to rectify the deficiency pointed out by the Hon. Commissioner of Income Tax (Appeals) - NFAC.*
3. *The Hon. Commissioner of Income Tax (Appeals) - NFAC dismissed the case merely on this technical ground without looking into the gist of the matter of Appeal.*
4. *The Hon. Commissioner of Income Tax (Appeals) - NFAC has not referred to the following two case laws which pertain to dismissing an appeal merely on technical grounds :*
 - i) *Chirayinkeezhu Service Co-operative Bank Ltd vs ITO (Kerala High Court) and*
 - ii) *State of Bihar vs Kameshwar Prasad Singh [2000 (9) SCC 94]*
5. *In view of the above facts it is pleaded that justice be done either by :*
 - i) *Hearing this case purely on merits that provisions of section 234E were not applicable to periods prior to 01/06/2015 or*
 - ii) *The case be remanded back to the Hon. Commissioner of Income Tax (Appeals) - NFAC*

1.1 The assessee for A.Y.2014-15 has raised the following grounds of appeal :

1. *No notices under section 201 or 220 were received. The letter dated 02/09/2022 came out of the blue*
2. *Levy u/s 234E came into force from 01.06.2015. It was not retrospective but proscriptive. It was only after the receipt of the letter dated 02/09/2022 that the Appellant went to the traces site and realized that levy for late filing of return u/s 234 had been charged.*

3. *The Department of Income Tax, through its Officers send such letters and intimidate the Assessee, leading him to spend money on the proceedings besides causing mental anguish. The ITD may be directed to pay an amount of Rs.25,000/- to the Indian Army Welfare Fund as compensation for this frivolous action.*

1.1 The assessee for A.Y.2014-15 has raised the following grounds of appeal :

1. *No notices under section 201 or 220 were received. The letter dated 02/09/2022 came out of the blue*
2. *Levy u/s 234E came into force from 01.06.2015. It was not retrospective but prospective. It was only after the receipt of the letter dated 02/09/2022 that the Appellant went to the traces site and realized that levy for late filing of return u/s 234 had been charged.*
3. *The Department of Income Tax, through its Officers send such letters and intimidate the Assessee, leading him to spend money on the proceedings besides causing mental anguish. The ITD may be directed to pay an amount of Rs.25,000/- to the Indian Army Welfare Fund as compensation for this frivolous action.*

ITA No.929/PUN/2023 for A.Y. 2013-14

Submission of ld.DR :

2. Ld.Departmental Representative(ld.DR) for the Revenue filed a letter dated 02.09.2022 issued by ITO-TDS, Ward-2, Pune for recovery of the outstanding demand to the Assessee. The ld.DR submitted that assessee had filed appeal before the ld.CIT(A) against this letter dated 02.09.2022 issued by ITO-TDS, Ward-2, Pune for recovery of outstanding demand. Therefore, ld.CIT(A) dismissed the appeal of the assessee. The ld.DR invited

our attention to section 246A which specifies the appealable orders. The ld.DR submitted that letter issued by ITO for outstanding demand is not an appealable order. Hence, ld.DR pleaded that appeal is not maintainable.

Submission of ld.AR :

3. At the time of hearing, no one appeared on behalf of the assessee. No adjournment letter has been filed by the assessee. The hearing notice was duly served by the ITAT Registry.

Findings & Analysis :

4. We have heard the ld.DR for the Revenue and perused the records. It is observed that the ld.CIT(A) has dismissed the appeal of the assessee as assessee failed to remove the deficiencies in the appeal. Assessee had filed facts of the case alongwith Form No.36 which is “form of appeal to the Income Tax Appellate Tribunal”. Assessee has mentioned following facts :

PADMAKAR VISHWAS DATE
TAN : PNEP17480B PAN : ANHPD3840B
ASSESSMENT YEAR 2013-14

FACTS OF THE CASE

1. The Appellant filed an appeal against the letter received from ITO – TDS 2, Pune giving a summary for seven (7) years of the levy to be paid under section 234E. No notice was received as such. The letter dated 02/09/2022 came out of the blue.
2. These seven years also included the A.Y. 2013-14 for which Assessment Year the provisions u/s 234E were not applicable. The levy u/s 234E came into force from 01.06.2015. It was not retrospective but prospective.

4.1 Thus, the assessee has admittedly filed appeal before the Id.CIT(A) against a letter issued by ITO for recovery of outstanding demand. The same fact is observed from Form No.35, which is the Form, for filing appeal before the Id.CIT(A) as per the Rule 45 of the Income Tax Rules.

5. It is observed from Form No.35 of the assessee in which, in Column No.12.1 assessee has referred to the letter dated 02.09.2022 of ITO(TDS), Ward-2, Pune. Nowhere in Form No.35 assessee has referred to order under section 201 of the Act. Thus, it is clear that assessee had filed appeal before the Id.CIT(A) against the letter dated 02.09.2022 issued by ITO(TDS), Ward-2, Pune.

“Section 246A :

Appealable orders before Commissioner (Appeals).

246A. (1) Any assessee or any deductor or any collector 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 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;
- (aa) an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;
- (ab) an order of assessment or reassessment under section 115WG;
- (b) an order of assessment, reassessment or recomputation under section 147 [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 150;
- (ba) an order of assessment or reassessment under section 153A [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;
- (bb) an order made under sub-section (3) of section 92CD;
- (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 except an order referred to in sub-section (12) of section 144BA;
- (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;
- (ha) an order made under section 201;
- (hb) an order made under sub-section (6A) of section 206C;
- (i) an order made under section 237;
- ⁷⁸[(ia) an order made under section 239A;
- (j) an order imposing a penalty under—
 - (A) section 221; or
 - (B) section 271, section 271A, section 271AAA, section 271AAB, section 271F, section 271FB, 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;
- (ja) an order of imposing or enhancing penalty under sub-section (1A) of section 275;
- (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 a penalty under section 271B or section 271BB;
- (n) an order made by a Deputy Commissioner imposing a penalty under section 271C, section 271CA, 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 class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct.”

6. The assessee can file appeal before the Id.CIT(A) only against the orders passed under specific section mentioned in section 246A of the Act. Since the letter of the ITO is not mentioned in section 246A of the Act, it is not appealable. The assessee had filed appeal against the letter of the ITO(TDS), Ward-2, Pune. The appealable orders before the Id.Commissioner of Income Tax(Appeals) are mentioned in Section 246A of the Act. Letter of an ITO is not an appealable order for the purpose of Section 246A of the Act. Therefore, we are of the opinion that Id.CIT(A) had rightly dismissed the appeal of the assessee as not maintainable. Accordingly, appeal of the assessee is dismissed.

7. In the result, appeal of the assessee is dismissed.

ITA Nos.930 & 931/PUN/2023 :

8. In ITA No.930 & 931/PUN/2023, it is an admitted fact that assessee had filed appeal before the Id.CIT(A) against the letter of the ITO. Since we have already discussed the issue at length and the facts of ITA No.929/PUN/2023 are similar to the facts of ITA Nos.930/PUN/2023 & ITA No.931/PUN/2023, therefore, our decision in ITA No.929/PUN/2023 shall apply *mutatis mutandis* to this appeal also, accordingly, grounds of appeal raised by the

assessee in both appeal of ITA Nos.930/PUN/2023 & ITA No.931/PUN/2023 are dismissed.

9. In the result, both appeal of the assessee in ITA Nos.930/PUN/2023 & ITA No.931/PUN/2023 are DISMISSED.

10. To sum up, three appeals of the assessee for ITA No.929/PUN/2023, ITA No.930/PUN/2023 and ITA No.931/PUN/2023 are dismissed.

Order pronounced in the open Court on 16th February, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 16th Feb, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.