



॥ आयकर अपीलीय न्यायाधिकरण, पुणे 'ए' न्यायपीठ, पुणे में ॥



IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE 'A' BENCH, PUNE
BEFORE HON'BLE SHRI S. S. GODARA, JUDICIAL MEMBER AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No. 1286 to 1309/PUN/2023

निर्धारण वर्ष / Assessment Year : 2013-14 to 2015-16

Dadasaheb Vittalrao Urhe
5, Abhijeet Engineers,
Panchwati Colony, Talegaon Dabhade,
Pune-410506
PAN:AAAPU9881D

..... अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
TDS, Pune.

..... प्रत्यर्थी / Respondent

द्वारा / Appearances

Assessee by : Mr Rohit Tapadiya ['Ld. AR']

Revenue by : Mr Ramnath Murkude ['Ld. DR']

सुनवाई की तारीख / Date of conclusive Hearing : 28/02/2024

घोषणा की तारीख / Date of Pronouncement : 29/02/2024

आदेश / ORDER

PER BENCH;

The present bunch of Twenty Four appeals of the assessee are assailed against respective orders of first appellate order of National Faceless Appeal Centre, Delhi [for short 'NFAC'] passed u/s 250 of the Income-tax Act, 1961 [for short 'the Act'], which ascended out of respective orders of intimation/rectification processed by the CIT/CPC-TDS, Pune [for short 'AO'] for various quarters pertaining to the assessment years [for short 'AY'] 2013-14 to 2015-16.

2. Since the facts and solitary issue involved in this bunch of appeals are identical, on the request of rival parties, for the sake of brevity these are heard together for a common and consolidated order.



3. At the outset, after vouching sufficiency of reasons beyond undeliberate delay in instituting these appeals, we after placing reliance on '*Vijay Vishin Meghani Vs. DCIT & Anr*' reported 398 ITR 250 (Bom) and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' reported at 167 ITR 5 (SC), deem it fit to condone the delay holding that 'none should be deprived of an adjudication on merits unless it is found that the litigant deliberately delayed the filing of appeal.'

2. Without reproducing the grounds of appeal, it shall suffice to state that, the present bunch of appeal seeks to adjudicate dual issue of authorisation of levy of fees u/s 234E for default in furnishing statement u/s 200(3) in the absence of enabling provision in the Act at the relevant time of occurrence of default in filing the statement and effective date from which levy of late fees is permissible.

3. Briefly stated the facts of the case as; the assessee an individual and the proprietor of Abhijeet Engineers failed to deliver various TDS statements within the time limit specified in sub-section (3) of section 200 of the Act. Consequently while processing the statement the Ld. AO levied late filing fees u/s 234E of the Act.

4. Aggrieved thereby, the assessee carried the matter unsuccessfully before the first appellate authority. In the event, the appellant came in appeal challenging levy & computation in absence of authority and enabling provisions as *contra-legem*.

5. We have heard the common rival contentions of both the parties; and subject to the provisions of rule 18 of Income Tax Appellate Tribunal Rules, 1963 [for short 'ITAT, Rules'] perused the material placed on records and considered the facts in the light of settled position law.



6. In the context of levy of fees for default, it shall serve to state that, a person liable to deduct any sum under the provisions of chapter XVII of the Act, is under obligation to deliver or furnish a statement u/s 200(3) of the Act within the due date prescribed therein and in the event of default such person is exposed to section 234E of the Act. Although the levy of fees u/s 234E for delay in furnishing statement has been brought into statute w.e.f. 1st July, 2012, the enabling provision of section 200A(1)(c) authorising such levy came into force w.e.f. 1st June, 2015 by Finance Act, 2015, consequently the fees levied for any default prior thereto being *sine auctoritate* hence unsustainable in the eyes of law. This position finds fortified by the Hon'ble High Court of Karnataka in '*Fatheraj Singhvi & Ors Vs UOI*' reported in 289 CTR 602 & '*Sree Ayyappa Educational Charitable Trust & Anr. Vs. DCIT (WP-618/2015)*'. Followed by Hon'ble Kerala High Court in '*Olari Little Flower Kuries Pvt. Ltd. Vs UOI(WA-600/2017)*', by co-ordinate benches in '*Medical Superintendent Rural Hospital Vs DCIT*' (2018) 173 ITD 575, '*KD Realities Pvt. Ltd. Vs CIT*' (2019)SCC Online21609, '*Permanent Magnets Ltd. Vs CIT*'(2019)SCC Online 20844

7. Without multiplying the judicial precedents on the subject matter, for brevity the applicability of provision of section 234E of the Act can be adumbrated as under;

Assessment Year	Provision Enabling for		Date of	
	Charring of Fees u/s 234E	Processing of Statement u/s 200A(1)(c)	Statement furnished u/s 200(3)	Effective Levy runs from (Delay)
Any AY Upto 2012-13	Not Present	Not Provided	By 31st May, 2015	-
			After 1st June, 2015	1st June, 2015
2013-14 to 2015-16	Enacted	Not Provided	By 31st May, 2015	-
			After 1st June, 2015	1st June, 2015
From 2016-17	Present	Provided 01/06/2015	By 31st May, 2015	-
			After 1st June, 2015	1st June, 2015



8. As it is clearly discernible from the above tabulation that, in respect of any assessment year the levy of fees for delayed filing of TDS statement is permissible where such statement is filed after 31st May, 2015. A belated statement filed anytime there before is expunged from attracting the provisions of section 234E of the Act.

9. The position of filing of statement in the present bunch noted as under;

Sr	Appeal No	Assessment Year	Quarter	Form	Date of Filing of Statement		234E Fees levied from
					Due	Filed	
1	ITA No 1286/PUN/2023	2013-14	Q2	26Q	15-10-12	16-07-23	16-10-12
2	ITA No 1287/PUN/2023	2013-14	Q3	26Q	15-01-13	16-07-13	16-01-13
3	ITA No 1288/PUN/2023	2013-14	Q4	24Q	15-05-13	16-07-13	16-05-13
4	ITA No 1289/PUN/2023	2013-14	Q2	24Q	15-10-12	16-07-13	16-10-12
5	ITA No 1290/PUN/2023	2013-14	Q3	24Q	15-01-13	16-07-13	16-01-13
6	ITA No 1291/PUN/2023	2013-14	Q4	24Q	15-05-13	29-01-14	16-05-13
7	ITA No 1292/PUN/2023	2013-14	Q2	27EQ	15-10-13	16-07-13	16-10-13
8	ITA No 1293/PUN/2023	2013-14	Q3	27EQ	15-01-13	16-07-13	16-01-13
9	ITA No 1294/PUN/2023	2013-14	Q4	27EQ	15-05-13	16-07-13	16-05-13
10	ITA No 1295/PUN/2023	2014-15	Q1	27EQ	15-07-13	25-04-14	16-07-13
11	ITA No 1296/PUN/2023	2014-15	Q2	27EQ	15-10-13	25-04-14	16-10-13
12	ITA No 1297/PUN/2023	2014-15	Q4	27EQ	15-05-14	23-07-13	16-05-14
13	ITA No 1298/PUN/2023	2014-15	Q1	26Q	15-07-13	25-04-14	16-07-13
14	ITA No 1299/PUN/2023	2014-15	Q2	26Q	15-10-13	25-04-14	16-10-13
15	ITA No 1300/PUN/2023	2014-15	Q3	26Q	15-01-14	25-04-14	16-01-14
16	ITA No 1301/PUN/2023	2014-15	Q4	24Q	15-05-14	23-07-14	16-05-14
17	ITA No 1302/PUN/2023	2014-15	Q4	26Q	15-05-14	23-07-14	16-05-14
18	ITA No 1303/PUN/2023	2015-16	Q1	26Q	15-07-14	08-08-15	16-07-14
19	ITA No 1304/PUN/2023	2015-16	Q2	26Q	15-10-14	27-07-15	16-10-14
20	ITA No 1305/PUN/2023	2015-16	Q3	26Q	15-01-15	27-07-15	16-01-15
21	ITA No 1306/PUN/2023	2015-16	Q4	26Q	15-05-15	27-07-15	16-05-15
22	ITA No 1307/PUN/2023	2015-16	Q1	24Q	15-07-14	27-07-15	16-07-14
23	ITA No 1308/PUN/2023	2015-16	Q2	24Q	15-10-14	27-07-15	16-10-14
24	ITA No 1309/PUN/2023	2015-16	Q1	27EQ	15-07-14	27-07-15	16-07-14



ITA No 1286/PUN/2023 to 1302/PUN/2023

10. The factual position tabulated herein before abundantly clarifies that, the regular TDS statements for various quarters anent to assessment year 2013-14 to assessment 2014-15 i.e. from Sr. No. 01 to 17 were filed admittedly after the expiry of prescribed due date of filing but before aforestated deadline of 31st May 2015. Therefore, levy of late fees u/s 234E of the Act is impermissible in the absence of enabling provision of section 200A(1)(c) of the Act. In the absence of any contrary facts or judicial precedents brought to our notice by the Revenue, we therefore direct the Ld. AO to delete the fees levied u/s 234E of the Act in its entirety in ITA 1286 to 1302/PUN/2023. The grounds of appeal raised in this bunch of seventeen appeals accordingly stands allowed.

ITA No 1303/PUN/2023 to 1309/PUN/2023

11. Insofar as the remaining bunch of seven appeals anent assessment year 2015-16 that is ITA No 1303/PUN/2023 to 1309/PUN/2023 is concerned, the appellant assessee filed initial TDS statements much after the expiry of prescribed due date and such delay in filing statements evidently fell after the deadline date i.e. 31st May, 2015. In these cases there is much less dispute on the applicability of provisions of section 234E of the Act. The only dispute in this bunch was computation of late filing fees from date falling outside the aforestated deadline i.e. 31/05/2015. The appellant contention that, period of delay in filing TDS statements falling within aforestated deadline is protected by the former judicial precedents, hence fees can only be levied from 01/06/2015 and upto the date of actual filing of statement. The Revenue could hardly avert this proposition.



12. The fact in this bunch of seven cases remain undisputed that, portion of delay fell anterior to cut-off date 01/06/2015 where the enabling provision for levy of late fees was absent. This provision of section 200A(1)(c) enabling the levy of fees u/s 234E of the Act came into force without retrospective operation w.e.f. 01/06/2015, therefore in our considered view the levy of late fees by no means be permitted for the period of delay falling anterior thereto. However, the levy of late fees u/s 234E of the Act for the balance portion of delay commencing from 01/06/2015 till the filing of TDS statement since exterior to former cut-off date is well within the law.

13. We accordingly direct the Ld. AO to re-compute the late fees leviable u/s 234E of the Act for the period of delay commencing from 01/06/2015 upto the date the TDS statement is filed belatedly. *Ergo* the grounds stands partly allowed.

14. **In result,**

- 1. The ITA 1286/PUN/2023 to 1302/PUN/2023 are ALLOWED.**
- 2. The ITA 1303/PUN/2023 to 1309/PUN/2023 are ALLOWED FOR STATISTICAL PURPOSE.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Thursday, 29th day of February, 2024.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 29th day of February, 2024.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The CIT Concerned, Pune

4. The Pr. CIT, Concerned Pune

5. DR, ITAT, 'A' Bench, Pune

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order,

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकरअपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.