



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.420 to 422/CTK/2024

Assessment Year : 2013-14

ITA Nos.423 to 424/CTK/2024

Assessment Year : 2015-16

Income Tax Officer (TDS), Aayakar Bhawan, Shelter Square, Cuttack	Vs.	Directorate of Animal Husbandry and Vety Services, Mangalabag, Buxibazar, Cuttack
PAN/TAN No.BBND0 0071 B		
(Appellant)	..	(Respondent)

Assessee by : None

Revenue by : Shri S.C.Mohanty, Sr DR

Date of Hearing : 29/10/2024

Date of Pronouncement : 29/10/2024

ORDER

Per Bench

These are appeals filed by the revenue against the separate orders of the Id CIT(A), NFAC, Delhi all dated 16.8.2024 in Appeal No. NFAC/2011-12/10203855, NFAC/2011-12/10203856, NFAC/2011-12/10203854,NFAC/2011-12/10203857,NFAC/2013-14/10203861 for three quarters of Financial year 2013 and two quarters of financial year 2014-15, respectively against levy of late fees u/s.234E of the Act.

2. Shri S.C.Mohanty, Sr. DR appeared for the revenue. None represented on behalf of the assessee.

3. At the time of hearing, Id Sr. D.R. placed before us the questionnaire sent by him to the Id CIT(TDS) and the reply there from, which reads as follows:

10/29/24, 9:52 AM webmail.incometax.gov.in/wc_static/layout/shell.html?lang=en&3.0.3.4.0_24021652

Subject: **Re: Specified information as per ASR form.** Date: 10/28/24 05:50 PM
 To: "itac.cuttack" <itac.cuttack@incometax.gov.in> From: "bhubaneswar.cit.tds" <bhubaneswar.cit.tds@incometax.gov.in>

10203854.pdf (1.1MB) 10203855.pdf (1.1MB) 10203856.pdf (1.1MB) 10203857.pdf (1.1MB)
 10203861.pdf (1.1MB)

Sir,

I am directed to forward the relevant information as desired in connection with appeal before the ITAT, Cuttack in the case of Director of Animal Husbandry and Vety Services fixed for hearing on 29.10.2024.

Regards,

(N.K. Tripathy)
 ITO(Hqrs)(TDS)-1,
 O/o the CIT(TDS), Bhubaneswar

On 10/28/24 04:14 PM, "itac.cuttack" <itac.cuttack@incometax.gov.in> wrote:

Urgent.

Government of India
 Office of the Adl. Commissioner of Income Tax (ITAT)-1
 ITAT Building, Sector 1, CDA, Cuttack-753014
 itac.cuttack@incometax.gov.in

F. no. ITA (420-424)/24 Date: 28/10/2024

To,
 Commissioner of Income Tax (TDS),
 Bhubaneswar.

Sub.: **Specified information as per ASR form.**

Sir,

1. Following information as per specified section of the prescribed Appeal Scrutiny Report (ASR) form may kindly be directed to be furnished *with copy to the post ID* in the following-
case:

Sl. no.	TAN	Assessee	F/Y	Quarter	Appeal no.
1	BBND00071B	Director of Animal Husbandry & Vety Services.	2012-13	Q-2, Q-3, Q-4	ITA-(420 to 424)/CTK /2024
			2014-15	Q-2, Q-4	

2. **Information as per the section relating to CIT** of the **prescribed form** of the **ASR** may kindly be made available under paragraph 9(viii) of the instruction no. 08/2011 [F NO. 279/MISC./M- 43/2011-ITJ] in view of non-compliance with items 9(i), 9(ii) of the ASR form prescribed in the instruction and with paragraph 13 of the instruction.

3. The note-sheet extract not containing the information exactly as sought under your signature shall not be furnished.

4. The case has been fixed for hearing at 10:30 a.m. on **29/10/2024**. The **cause-list was issued on the end of the last working day.**

https://webmail.incometax.gov.in/wc_static/layout/shell.html?lang=en&3.0.3.4.0_24021652

Yours faithfully,
Sd/-
(Sovesh Chandra Mohanty)
Addl.CIT(ITAT)-1,Cuttack



भारत सरकार
GOVERNMENT OF INDIA
अपर आयकर आयुक्त कार्यालय (टीडीएस)
OFFICE OF THE ADDL. COMMISSIONER OF INCOME TAX (TDS),
दितिङ मंजील, आयकर भवन एनेक्सी, भुवनेश्वर- 751007
2nd FLOOR, AAYAKAR BHAWAN ANNEXE, BHUBANESWAR – 751007.

F. No. Addl.CIT(TDS)/BBSR/scrutiny report/2024-25/
Dated, Bhubaneswar the 24th September, 2024.

सेवा में /To

The Commissioner of Income Tax(TDS),
Bhubaneswar.

महोदय/Sir,

विषय/Sub Submission of Adverse Scrutiny Report in the case of Directorate of Animal Husbandry & Vety Services, TAN: BBND00071B for the F.Y. 2012-13(A.Y. 2013-14), Appeal No.NFAC/2011-12/10203854 - Matter reg.

Ref F.No.CIT/TDS/BBSR/Appeal Order/2024-25/3781 dated 13.09.2024.

Kindly refer to the above letter.

ITO(TDS), Cuttack has not recommended filing of further appeal on the ground that the tax effect in this case is below monetary limit prescribed in the Circular No.9/2024 dated 17.09.2024.

I differ from the recommendation of the officer. In this case, the only issue before the appeal for consideration is levy of fee u/s. 234E of the I.T. Act, 1961. Tax is define u/s 2(43) of the I.T. Act which stipulates that Tax means Income Tax chargeable under the provision of I.T. Act, 1961. Hence, fee cannot be treated as Tax as per the provision of section 2(43) of the I.T. Act. In the instant case, the tax effect is neither quantifiable nor involved.

As the tax effect is not involved in this case the decision to file further appeal or otherwise should be taken on merit of the case without any reference to tax effect and the monetary limit as per Para 3.1(f) of Circular No.5/2024 dated 15.03.2024.

The order of the Ld. CIT(Appeals) allowing relief to the assessee is found to be perverse. He has exceeded his brief beyond the scope of the 'Ground' taken by the assessee and allowed relief on the basis of evidence/fact which are not relevant to the ground taken.

The gist of the sole ground for consideration before the CIT(Appeals) is as below:

The assessee agitates that fee U/s. 234E of the I.T. Act cannot be levied under any proceedings of that Act after the statement of TDS has been filed even if the assessee has not paid the requisite fee along with that statement. Further it is stated that the AO had levied fee of Rs. 32,000/- U/s. 200A of the IT Act.

While allowing relief to the assessee Id. CIT(Appeals) quoting several case laws had concluded that fees U/s. 234E cannot be levied for an assessment year prior to 01.06.2015.


Nowhere in the grounds of appeal, the assessee has questioned the validity of levy of fee prior to 01.06.2015. The case laws cited by him such as judgment of Hon'ble ITAT, Cuttack in the case of **TB and ID Hospital Vrs. ITO(TDS)-1** and that of Hon'ble Karnataka High Court in the case of **Fatehraj Singvi and Ors. Vrs. Union India** relate to the issue of validity of levy of fee prior to 01.06.2015. In the present case this issue does not carry any relevance as the prayer/ground taken by the assessee in appellate proceeding does not agitate the issue as decided in the above judgment.

Further, the order which was appealed against was passed u/s 154 of the Act as seen from the para 1 of the appellate order. However, while deciding the issue the learned CIT(A) has erroneously assumed that the fee was levied u/s 234E for late filing of TDS return in intimation issue u/s 200A(1) of the I.T. Act. Basing on such erroneous presumption, the learned CIT(A) has proceeded to discuss the provision of section 200A of the Act and its applicability prior to 01.06.2015 (Page 9 to 12 of the appellate order). Hence, the order of the learned CIT(A) allowing relief to the assessee is rendered perverse being based on the facts which is contrary to the evidence on record. Also, the learned CIT(A) has exceeded his scope by going beyond the prayer of the assessee as stipulated in the grounds of appeal and allowed relief basing on the fact which is not relevant to the ground taken.

In the light of the above discussions further appeal to the ITAT is recommended in this case.

Encl: As stated above.

Yours faithfully,


(M.R. Rath)

Joint Commissioner of Income-Tax (TDS)
Bhubaneswar.

4. It was the submission that the orders of Id CIT(A) granting relief to the assessee were perverse.

5. We have considered the submissions of Id Sr. DR. as also perused the orders of Id CIT(A). A perusal of the orders of Id CIT(A) clearly shows that the Id CIT(A) has considered the primary issue as to whether the levy of late fees is permissible under section 234E for three quarters of Financial

year 2012-13 and two quarters for Financial year 2014-15, especially in view of the fact that the intimation u/s.200A brought in statute w.e.f. 01.06.2015. Section 234E of the Act by itself cannot make computation without the provisions of section 200A of the Act, when the empowering section came into effect only w.e.f. 1.6.2015. Thus, the enabling provision came into effect only w.e.f. 1.6.2015, obviously, 234E would be leviable only from the time the enabling section came into effect. This being so, as also after noticing that the Id CIT(A) has followed the decision of the Coordinate Bench of this Tribunal in the case of TB and ID Hospital vs ITO-TDS(1) dated 27.8.2018 as also the decision of the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi & Ors vs Union of India (2016 (9) TMI 964 and also followed the judicial discipline, we find no error in the orders of Id CIT(A) to interfere in respect of three quarters of F.Y. 2012-13 and two quarter of F.Y. 2014-15.

6. In the result, appeals of the revenue are dismissed.

Order dictated and pronounced in the open court on 29/10/2024.

Sd/-
(Manish Agarwal)
ACCOUNTANT MEMBER

sd/-
(George Mathan)
JUDICIAL MEMBER

Cuttack; Dated 29/10/2024
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant :
2. The Respondent:
3. The CIT(A)- NFAC, Delhi
4. Pr.CIT,
5. DR, ITAT,
6. Guard file.
//True Copy//

