

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1530 to 1533/PUN/2024  
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

Kedar Associates, 105A Narayan Peth Off Lakmi Road, Pune- 411030. PAN : AABFK6598A	Vs.	ITO, TDS Ward-2, Pune.
Appellant		Respondent

Assessee by : Shri Sharad A. Vaze  
Revenue by : Shri Ramnath P. Murkunde  
Date of hearing : 13.11.2024  
Date of pronouncement : 29.11.2024

**आदेश / ORDER**

**PER VINAY BHAMORE, JM:**

The above captioned four appeals filed by the assessee are directed against the separate orders of Ld. CIT(A)/NFAC dated 13.04.2023 for the assessment years 2013-14 & 2014-15 respectively.

2. Since identical facts and common issues are involved in all the above captioned four appeals of the assessee, therefore, we proceed to dispose of the same by this common order.

3. At the outset, we find that there is delay of 400 days in filing of these appeals. Ld. AR furnished an affidavit explaining the reasons of delay in filing of these appeals. We are satisfied with the reasons mentioned in the application for condonation of delay which is duly supported by an affidavit. Ld. DR raised no serious objection against the delay condonation request made by the assessee. Accordingly, the delay of 400 days in filing of these appeals is condoned and the appeals are admitted for adjudication.

4. First, we shall take up the appeal of the assessee in ITA No.1530/PUN/2024 for A.Y. 2013-14 (Quarter 2) for adjudication.

**ITA No.1530/PUN/2024, A.Y. 2013-14 :**

5. The appellant has raised the following grounds of appeal :-

- “1. *On the basis of facts and circumstances of the case, it is prayed that the delay of 390 days in filing the present appeal be condoned.*  
*An affidavit explaining the reasons for delay is enclosed with this appeal.*
2. *On the basis of facts and circumstances of the case and as per law, the Commissioner of Income Tax, (Appeals) of National Faceless Appeal Centre, Delhi has erred in confirming the fine of Rs.54,800/- u/s 234E for the period prior to 01<sup>st</sup> June, 2015.*
3. *The appellant craves leave to add, alter, omit or substitute any of the grounds at the time of hearing of the appeal.”*

6. The facts of the case, in brief, are, that the assessee is a partnership firm liable to deduct TDS & also required to file quarterly TDS returns in form 26Q for the relevant period. The assessee filed Quarterly TDS return with a delay of 274 days accordingly CPC (TDS), Ghaziabad has levied fees u/s 234E at the rate of Rs.200 per day while processing the return electronically on 23.11.2013. This intimation u/s 200A of the IT Act dated 23.11.2013 issued by the CPC (TDS), Ghaziabad for the Q2 of financial year 2012-13 was claimed to be not received by the assessee and it was contended that the fact of passing of the above impugned order only came in the knowledge of the assessee when letter of demand/justification report was downloaded by him from TRACES portal. On the basis of this justification report an appeal was filed belatedly before Ld. CIT(A)/NFAC.

7. After considering the reply, Ld. CIT(A)/NFAC refused to condone the delay of 2965 days in filing of first appeal and dismissed the appeal without admitting the same. Without prejudice to above, it was also observed by Ld. CIT(A)/NFAC that appeal is filed against order passed u/s 200A but no such order is filed along with Form 35 appeal memo. But only the default

summary which only mentions the details of various demand pending in case of the assessee has been filed which is not an order passed by the Assessing Officer against which an appeal can be filed. As the appellant is required to file the copy of the appealable order against which the appeal has been filed and in absence of the same the appeal becomes defective liable to be rejected. Accordingly, with this observation Ld. CIT(A)/NFAC held that in the absence of copy of appealable order the appeal is invalid and held to be legally not maintainable. It is this order against which the assessee is in appeal before this Tribunal.

8. Ld. AR appearing for the assessee submitted before us that the provisions of section 200A were inserted by only w.e.f. 1.6.2015 by the Finance Act, 2015 and no late fee u/s 234E can be levied prior to insertion of provisions of section 200A of the IT Act. Ld. AR further submitted that Ld. CIT(A)/NFAC ought to have condoned the delay, as the appellant had shown the sufficient cause for delay in filing the appeal.

9. Ld. DR appearing from the side of the Revenue placed heavy reliance on the orders passed by the subordinate authorities and requested to confirm the same.

10. We have heard Ld. Counsels from both the sides and perused the material available on record. It is the contention of Ld. Counsel of the assessee that the assessee has not received any order/intimation u/s 200A and therefore he was unable to file first appeal within prescribed time limit and therefore Ld. CIT(A)/NFAC ought to have condoned the delay. Now it is the submission of the assessee that in 2024 the copy of intimation/order has been obtained and produced before the Bench which may kindly be considered. But at the same time we also find that in first appeal memo Form 35 the assessee himself mentioned the fact about filing of rectification letter on 12.07.2017 against the levy of fees u/s 234E before Income Tax Officer, TDS-2, Pune which itself contradicts the statements of the appellant-assessee. Accordingly, we find that the appellant-assessee was already in receipt of intimation about levy of fees u/s 234E on/before 12.07.2017 when rectification letter was furnished by him. Hence we do not find any substance in the contention of the assessee that he was unaware with the demand and intimation u/s 200A was not received by him. In addition to above fact, we also find that an identical issue has been decided by the Tribunal in the

case of sister concern of the assessee firm i.e. Kedar Infrastructure vs. ITO in ITA Nos.228 to 233/PUN/2023 order dated 05.04.2023, wherein, the Tribunal dismissed the appeal of the assessee and even the Miscellaneous Application against the above order filed by the assessee was also dismissed in March, 2024. The relevant paragraphs of the order of the Tribunal in the case of Kedar Infrastructure (supra) are reproduced hereunder :-

*“Findings and Analysis:*

3. *In this case the assessee has filed an appeal before the Ld.CIT(A) against “a letter” issued by the Assessing Officer(AO) with reference to recovery of demand. We specifically asked the ld.AR, whether assessee had filed copy of order under section 200A before the ld.CIT(A). The ld.AR admitted that assessee had filed an appeal against letter of the AO and justification report, downloaded from the systems. The ld.AR also admitted before us that he has not filed any copy of order under section 200A either before the ld.CIT(A) or before the Hon’ble ITAT. The ld.AR admitted that he has merely filed copy of the justification report downloaded from the Income Tax Systems. Thus, in this case, it is an admitted fact that assessee has filed an appeal before the ld.CIT(A) against a letter issued by AO regarding recovery. Section 246A of the Income Tax Act specifies the orders against which appeal can be filed before the ld.CIT(A). Recovery Letter issued by the AO or the justification report does not form appealable orders mentioned under section 246A of the Act. Therefore, we agree with the ld.CIT(A) that appeal of the assessee was not maintainable and it was an infructuous appeal. In these facts and circumstances of the case, the order of the ld.CIT(A) dismissing the appeal of the assessee as infructuous, not maintainable is upheld. Since the ld.CIT(A) has dismissed the appeal of the assessee as not maintainable, the ld.CIT(A)’s observations regarding merits of the case are outside the scope of the order. We do not intend to comment on the merits of the case.*

3. *Accordingly, Ground No.1 of the assessee is dismissed.*

*Ground No.2 :*

4. *Ground No.2 is regarding the merits of the case. No order under section 200A has been filed before us. No order under section 200A was filed before the ld.CIT(A). In the absence of basic document i.e. order under section 200A, we cannot comment on the merits of the case. Therefore, Ground No.2 is dismissed as not maintainable.*

5. *Ground No.3 is general in nature and needs no adjudication, hence, ground no.3 is dismissed.*

6. *In the result, appeal of the assessee in ITA No.228/PUN/2023 is dismissed.”*

11. Respectfully following the above decision of the Tribunal in the case of Kedar Infrastructure (supra) and in the light of the fact that in the year 2017 itself the assessee was already in receipt of information that such an order imposing fees u/s 234E has been passed, we do not find any infirmity in the order passed by Ld. CIT(A)/NFAC dismissing the appeal of the assessee. Thus, the grounds of appeal filed by the assessee are dismissed.

12. In the result, the appeal filed by the assessee in ITA No.1530/PUN/2024 for A.Y. 2013-14 is dismissed.

**ITA Nos.1531 to 1533/PUN/2024,**  
**A.Ys. 2013-14 & 2014-15 :**

13. Since the facts and issues involved in remaining three appeals of the assessee for the assessment years 2013-14 & 2014-15 are identical to the facts of the case for assessment year 2013-14 in

ITA No.1530/PUN/2024, therefore, our decision in ITA No.1530/PUN/2024 for A.Y. 2013-14 shall apply *mutatis mutandis* to remaining three appeals of the assessee in ITA Nos.1531 to 1533/PUN/2024 for A.Ys. 2013-14 & 2014-15. Accordingly, the remaining three appeals of the assessee in ITA Nos.1531 to 1533/PUN/2024 for A.Ys. 2013-14 & 2014-15 are dismissed.

14. To sum up, all the above captioned four appeals of the assessee are dismissed.

Order pronounced on this 29<sup>th</sup> day of November, 2024.

Sd/-  
**(R. K. PANDA)**  
**VICE PRESIDENT**

Sd/-  
**(VINAY BHAMORE)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 29<sup>th</sup> November, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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