

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "B" BENCH : PUNE
BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

I.T.A.Nos.2049 to 2062/PUN./2024
Assessment Years – 2013-2014 to 2015-2016

Pancharatna Buildcon Private Limited, A/P Rajgurunagar, Chandoli, Gulani P.O. PUNE. PIN – 410 505. PAN AAFCP2872D (Appellant)	vs.	The Income Tax Officer, Ward-2(1), Kendriya Rajaswa Bhavan, Gadkari Chowk, NASHIK. Maharashtra. PIN – 422 002. (Respondent)
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For Assessee :	Shri Aakash Parakh And Shri Piyush Bafna
For Revenue :	Shri Arvind Desai, Addl. CIT-DR

Date of Hearing :	28.11.2024
Date of Pronouncement :	05.12.2024

ORDER

PER BENCH :

The above batch of fourteen appeals filed by a single assessee viz., Pancharatna Buildcon Private Limited are directed against the separate orders of the learned CIT(A)-NFAC, Delhi, all dated 23.07.2024, relating to assessment years 2013-2014 to 2015-2016. Since common issues are involved in all these appeals, therefore, these appeals were heard together and are being disposed of by this common order for the sake of brevity and convenience.

2. First we take ITA.No.2049/PUN./2024 as the "lead" case.

2.1. Facts of the case, in brief, the assessee is a Private Limited Company and it had filled its TDS quarterly statement of quarter 3 in Form-26Q for assessment year 2013-2014 with some delay. The learned Dy. Director of Income-tax, Centralized Processing Cell-TDS, Vaishali, Ghaziabad imposed late fee U/S 234E of the Income Tax, Act, 1961 [in short "the Act"] of Rs.23,800/- for failure of the assessee to file the quarterly returns of T.D.S. within the prescribed time and charged interest u/s.220(2) of the Act amounting to Rs.29,675/-; both totaling to Rs.53,475-.

3. Before the Ld. CIT(A), the assessee submitted that as per the provisions of sub-section (3) of Section 234E, it shall be paid before delivering a TDS statement which means that late fee, if any, should have been deposited before or just at the time of delivering TDS statement and not later than this. Once the TDS statement has been accepted without late fee, then such late fee cannot be recovered later on. It was accordingly submitted that late fees cannot be recovered later on by way of any notice and no notice of demand u/s.156 can be issued for this. It was also argued that provisions of section 200A of the Act do not permit processing of TDS statement for default in payment of late fees. It permits only any arithmetical error, or incorrect claim, or default in payment of interest and TDS payable or refundable etc.

3.1. It was further argued that the learned DCIT, CPC-TDS, Vaishali, Ghaziabad has no jurisdiction to charge late fee u/s.234E of the Act for the reasons that there is no enabling procedure for computation of late fee u/s.200A of the Act concerning the quarter under consideration. It was submitted that the provision for computation of late fee was inserted by the Finance Act w.e.f 01.06.2015. This amendment is prospective in nature and, therefore, late fee of Rs.23,800/- imposed u/s.234 r.ws 200A of the Act is not maintainable. Various decisions were also brought to the notice of the CIT(A) to the proposition that no interest u/sec.234E can be imposed for the periods prior to 01.06.2015.

4. However, the Ld. CIT(A) was not satisfied with the arguments advanced by the assessee. He observed that the fee for charging for default in timely furnishing of the TDS statements has already existed in the form of section 234E of the Act since July 01, 2012. It's only that the raising of the demand for late fee was also incorporated in the intimation under section 200A of the Act with effect from June 01, 2015. He observed that the section was inserted by Finance Act, 2012 with the legislative intent of levying fees for default in furnishing TDS statement in time. Therefore, as per the statutory provisions inserted by Finance Act-2012, payment of late fee for filing TDS. return late is mandatory. It is not in the nature of penalty so that it may be subject to waiver. Even

appeal against order u/s.234E is not maintainable as per provisions of section 246A of the Act. He accordingly held that the demand raised for levy of late fee u/sec.234E for the period prior to 01.06.2015 is very well valid and the levy of late fee under section 234E of the Act cannot be assailed. He accordingly upheld the order of the AO/CPC, TDS and dismissed the appeals filed by the assessee.

5. Aggrieved with such orders of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds in it's "lead" appeal ITA.No.2049/PUN./2024 :

"A. GROUNDS CHALLENGING LEVY OF LATE FEES U/S 234E:

- 1. On the facts and in the circumstances of in case and in law, Ld. CIT-Appeals has erred in upholding the order passed by the Ld. ACIT CPC-TDS without proper appreciation of submissions filed and further disregarded the judicial precedents relied upon and thereby erred in confirming the levy of late fee u/s 234E of Rs.23,800/- in the intimation generated u/s 200A passed in respect of the TDS statement filed in Form 26Q for Quarter 3 of FY 2012-13 i.e., AY 2013 -14.*
- 2. On the facts and in the circumstances of the case and in law and without prejudice to any other grounds learned*

CIT-A failed to appreciate that in respect of the TDS statements filed for the period prior to 01-06-2015 there was no jurisdiction to levy the late fee u/s 234E and hence, the levy of late fee in respect of the TDS statement filed in the instant case for Quarter 3 of FY 2012- 13 i.e., AY 2013-14 was not justified in the intimation passed u/s 200A of the Act.

- 3. On the facts and in the circumstances of the case and in law and without prejudice to any other grounds, it is submitted that the TDS had been duly deposited within the stipulated time and there was a reasonable cause on the part of the appellant which resulted into delay in filing the TDS statement and therefore, the levy of late fee would result into genuine hardship to the Appellant and hence, the same may please be deleted.*

B. GROUNDS CHALLENGING LEVY OF INTEREST U/S 220(2):

- 4. On the facts and in the circumstances of the case and in law and without prejudice to any other grounds, Ld. ACIT CPC-TDS has also erred in levying the interest u/s 220(2) of the Act of Rs 29,675/- which may please be deleted.*

C. OTHER GROUNDS:

- 5. The appellant craves leave to add, amend, modify, alter, revise, substitute, or withdraw any or all grounds of the*

appeal at the time of hearing of the appeal, if deemed necessary, in the interest of justice.”

6. Similar grounds have been raised in other appeals.

7. Learned Counsel for the Assessee, at the very outset, filed a chart showing the details of these 14 appeals with respect to total sum determined by the CPC on both counts i.e., (i) with respect to late fee levied by the AO/CPC for the delay in filing of TDS quarterly statements in Form-26Q for the assessment years 2013-2014 to 2015-2016 and (ii) charging of interest u/s.220(2) of the Act, as under :

Pancharatna Buildcon Private Limited
Chart showing details of various Appeals filed Before "B" Bench Pune ITAT

Sr. No	ITA No.	FY	AY	Quarter	Section	234E	Interest	Total Demand
1	2049/PUN/2024	2012-13	2013-14	3	26Q	23,800	29,675	53,475
2	2050/PUN/2024	2013-14	2014-15	1	24Q	15,160	13,288	28,448
3	2051/PUN/2024	2013-14	2014-15	2	24Q	17,660	15,488	33,148
4	2052/PUN/2024	2013-14	2014-15	3	24Q	39,160	34,408	73,568
5	2053/PUN/2024	2013-14	2014-15	2	26Q	78,600	88,818	1,67,418
6	2054/PUN/2024	2013-14	2014-15	3	26Q	60,200	52,976	1,13,176
7	2055/PUN/2024	2014-15	2015-16	1	24Q	5,500	5,830	11,330
8	2056/PUN/2024	2014-15	2015-16	2	24Q	16,500	17,490	33,990
9	2057/PUN/2024	2014-15	2015-16	3	24Q	27,800	29,468	57,268
10	2058/PUN/2024	2014-15	2015-16	4	24Q	4,800	5,088	9,888
11	2059/PUN/2024	2014-15	2015-16	1	26Q	25,041	26,500	51,541
12	2060/PUN/2024	2014-15	2015-16	2	26Q	46,000	48,760	94,760
13	2061/PUN/2024	2014-15	2015-16	3	26Q	27,800	28,999	56,799
14	2062/PUN/2024	2014-15	2015-16	4	26Q	3,800	4,028	7,828

7.1. Learned Counsel for the Assessee submitted that in all these 14 appeals, the period for late fee is prior to 01.06.2015. Referring to a series of decisions, he submitted that no interest u/sec.234E can be imposed for the period prior to June 01, 2015. He also relied on the decision of the Coordinate Bench of the Tribunal in the case of Dadasaheb

Vittalrao Urhe, Pune vs. ITO, TDS, Pune in ITA.No.1286 to 1309/PUN./2023, dated 29.02.2024 and in the case of Dhairyasheel Pralhad Pawar, Kolhapur vs. DCIT, TDS-CPC, Kolhapur ITA.Nos.950 to 955/PUN./2022, order dated 14.02.2023.

8. The Learned DR, on the other hand, fairly conceded that the Coordinate Benches of the Tribunal in a number of decisions have held that no interest u/sec.234E can be levied for the periods prior to 01.06.2015.

9. We have heard the rival arguments made by both the parties and perused the material available on record. It is an admitted fact that because of late filing of the quarterly TDS return in Form-26Q, for the period Q3 of F.Y. 2012-2013 the Dy. Director of Income Tax, Centralized Processing Cell-TDS, Vaishali, Ghaziabad has imposed late fee u/s.234E of the Act and thereby, computed interest u/s.220(2) of the Act. We find the Ld. CIT(A) upheld the action of the CPC on the ground that as per the statutory provisions inserted by the Finance Act, 2012 payment of late fee for filing TDS late is mandatory. Therefore, the demand raised for levy u/sec.234E for the period prior to 01.06.2015 is very well valid and the levy of late fee u/sec.234E of the Act cannot be assailed.

9.1. We find under identical circumstances, the Coordinate Bench of the Tribunal in the case of Dhairyasheel Pralhad Pawar, Kolhapur vs. DCIT, TDS-CPC, Kolhapur ITA.Nos.950 to 955/ PUN./2022 dated 14.02.2023, has held that no late fee u/sec.234E can be imposed for the periods prior to 01.06.2015. The relevant observations of the Tribunal in para nos.5 and 6 are as under :

“5. We have heard the rival submissions and gone through the relevant material on record. It is seen that fee u/s.234E has been imposed by the AO for belated filing of the relevant statements. The assessment years involved in these 5 appeals are 2013-14 and 2014-15, which shows that the fee u/s.234E has been imposed for the delay in furnishing the statements for quarters prior to 01-06-2015.

6. Section 200A deals with processing of statements of tax deducted at source. Clause (c) of section 200A(1) was inserted by the Finance Act 2015 w.e.f. 01-06-2015 providing for the levy of fee u/s.234E of the Act. In that view of the matter, such fee u/s.234E can be levied only for the default committed after 01-06-2015 and not prior to that. The Hon'ble Kerala High Court in Olari Little Flower Kuries Pvt. Ltd. Vs. Union of India and others (2022) 440 ITR 26 (Kerala) has affirmed the non-imposition of fee for the period prior to 01-06-2015. Similar view has been taken in Jiji Varghese VS. ITO(TDS) & Ors. (2022) 443 ITR

267 (Ker) holding that no interest u/s 234E can be imposed for the periods of the respective A.Ys. prior to June 1, 2015.”

9.2. We find the learned Coordinate Bench of the Tribunal in the case of Dadasaheb Vittalrao Urhe, Pune vs. ITO, TDS, Pune ITA.No.1286 to 1309/PUN./2023 dated 29.02.2024 under identical circumstances observed as under :

“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 we.f. 1 July, 2012, the enabling provision of section 200A(1)(c) authorising such levy came into force w.e.f. 1" 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."

10. Since admittedly in the instant case, the Assessing Officer/CPC-TDS has levied late fee u/sec.234E for the period prior to 01.06.2015, therefore, respectfully following the decisions of the Coordinate Benches of the Tribunal (supra) and in absence of any contrary material brought to our notice by the Learned DR, we set aside the order of the Ld. CIT(A) and direct the Assessing Officer-CPC to delete the late fee u/sec.234E and the consequential interest u/sec.220(2) of the Act. The grounds raised by the assessee in its "lead" appeal ITA.No.2049/PUN./2024 are accordingly allowed.

11. In the result, ITA.No.2049/PUN./2024 filed by the assessee is allowed.

12. Since facts in the remaining appeals are identical to the facts of the appeal in ITA.No.2049/PUN./2024, therefore, respectfully following our observations in the said appeal, these appeals ITA.Nos.2050 to 2062/PUN./2024 of the assessee are allowed.

13. To sum-up, ITA.Nos.2049 to 2062/PUN./2024 of the Assessee are allowed. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 05.12.2024.

Sd/-
[MS. ASTHA CHANDRA]
JUDICIAL MEMBER

Sd/-
[RAMA KANTA PANDA]
VICE PRESIDENT

Pune, Dated 05th December, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.