

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM "DIVISION" BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, उपाध्यक्ष एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, VICE PRESIDENT  
&  
SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. Nos.456, 457 & 458/Viz/2024  
(निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16)

Government Polytechnic, Visakhapatnam. PAN: AAAGG1122Q (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, TDS Ward-1, Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	17/12/2024
घोषणा की तारीख/Date of Pronouncement	:	31/01/2025

O R D E R

PER DUVVURU RL REDDY, VICE PRESIDENT:

All these appeals are filed by the assessee against the orders of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)-NFAC"), dated 10/09/2024 arising out of the orders passed U/s. 200A of the Income Tax Act, 1961 ("the Act"). Since the issues involved in these appeals are identical, for the sake of convenience, these

appeals are clubbed, heard together and disposed off in this consolidated order.

**ITA No. 456/Viz/2024**  
**(AY: 2014-15)**

2. Briefly stated the facts pertaining to the AY 2014-15 are that the assessee is a Government Polytechnic College. The assessee has filed TDS quarterly returns in Form-26Q for Quarter-4 of Financial Year 2013-14 belatedly on 24/04/2017. Subsequently, the Learned Assessing Officer ("Ld. AO") assessed the quarterly returns filed by the assessee and passed intimation U/s. 200A of the Act, dated 03/05/2017 and levied late filing fee of Rs. 2,15,200/- U/s. 234E of the Act on account of delayed filing of the TDS returns for the AY 2014-15. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), NFAC belatedly beyond the prescribed time limit specified under the Act. Before the Ld. CIT(A)-NFAC, the assessee has filed petition explaining the reasons for belated filing of the TDS returns with a prayer for condonation of delay. Before the Ld. CIT(A)-NFAC, the assessee has also submitted that the delay in filing the appeal before the First Appellate Authority may be condoned to advance substantial justice on the ground that the

issue involved therein, on merits, is with respect to levy of late filing fee U/s. 234E of the Act is now covered in favour of the assessee by various decisions as per which there is no provision under the Act to levy late filing fee before insertion of section 200A by Finance Act, 2015 w.e.f 1/6/2015. However, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. The order of the Assessing Officer is contrary to the facts and also the law applicable to the facts of the case.*
- 2. The Assessing Officer (CPC) is not justified in charging late filing fee of Rs. 2,15,200/- U/s. 234E of the Act in the intimation dated 03/05/2015 issued U/s. 200A of the Act.*
- 3. Any other grounds that may be urged at the time of appeal hearing.”*

3. Before us, at the outset, it is the contention of the Ld. Authorized Representative [Ld. AR] that the enabling provision for computation of fee while processing the statements was inserted in section 200A only w.e.f 1/6/2015 and therefore, the charging section i.e., section 234E cannot be enforced prior to 1/6/2015. The Ld. AR further submitted that the amended provision applies for all the returns pertaining to the period after 1/6/2015 and

not for the returns pertaining to the period prior to 01/06/2015 notwithstanding the fact that the returns pertaining to the period prior to 01/06/2015 were filed after 01/06/2015 or processed after 01/06/2015. The Ld. AR further submitted that in the present case, the due date for filing the TDS returns falls before the specified date of 1/6/2015 and therefore section 234E cannot be enforced since it is prior to 1/6/2015. The Ld. AR therefore submitted that the Ld. Revenue Authorities erred in levying and confirming the levy of late fee U/s. 234E of the Act while processing the TDS return U/s. 200A of the Act for the relevant period under consideration. In support of his view the Ld. AR relied on the judgment of the Hon'ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India [2016] 73 taxmann.com 252 (Karnataka); judgment of the Hon'ble Kerala High Court in the case of United Metals vs. ITO (TDS) reported in [2022] 137 taxmann.com 115 (Kerala); decision of the Pune Bench of the Tribunal in the case of Medical Superintendent Rural Hospital, Nashik vs. DCIT, CPC (TDS), Ghaziabad in ITA Nos. 651 to 661/Pun/2018, dated 25/10/2018. The Ld. AR also relied on the decision of this Bench in the case of Mohammed Vaziruddin vs. ITO in ITA Nos. 190 to 197/Viz/2022, dated

15/12/2022. The Ld. AR therefore pleaded that the decision of the Ld. Revenue Authorities may be set-aside and the assessee may be granted relief by deleting the late fee levied U/s. 234E of the Act.

4. On the other hand, Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities specifically with respect to the levy / imposition of late fee u/s. 234E of the Act by the Ld. AO. It is the submission of the Ld. DR that since the assessee filed its TDS statements beyond the stipulated time as per the TDS provisions, late fee was levied on account of default in furnishing the statements beyond the prescribed time limit under the Act. The Ld. DR further submitted that the fee charged U/s. 234E is not in lieu of penalty as the fee charged under section 234E is not in the nature of penalty and is a fee which the deductor shall be liable to pay in the event of delay in filing the TDS statements as prescribed. The Ld. DR further submitted that the Fee charged U/s. 234E is a fixed fee charged in the case of statements are rendered beyond the stipulated time which is happened in the instant case. The Ld. DR also submitted that it is rightly observed by the Hon'ble Bombay High Court in the case of Rashmikant Kundalia vs. Union of India

(supra) *“because of late filing of TDS statements Department is overburdened with extra work which is otherwise not required if the TDS statements are furnished within the prescribed time limit.”*

The Ld. DR also heavily relied on the decision of the Hon’ble Gujarat High Court in the case of Rajesh Kourani vs. Union of India (supra) for the proposition that *“a machinery provision (section 200A) cannot override the substantive provision of law”*.

The Ld. DR therefore pleaded that since the action taken by the Ld. Revenue Authorities is in accordance the provisions of the Act and also in accordance with law, as discussed above, and hence the order of the Ld. Revenue Authorities need not be disturbed / interfered with.

5. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. We have also gone through the decision of the this Bench in the case of Mohammed Vaziruddin vs. ITO in ITA Nos. 190 to 197/Viz/2022, dated 15/12/2022 (supra) wherein identical issue was decided by the Tribunal after thoroughly discussing the facts as well as the provisions of the Act. Further, while deciding the case in favour of the assessee, the Tribunal

has also followed the ratios laid down by various High Courts. For the sake of reference, relevant paras from the said order of the Tribunal dated 15/12/2022 (supra) are extracted herein under:

*“8. We have heard both the sides, perused the material available on record as well as the orders of the Ld. Revenue Authorities. The main question that arises in this appeal is whether TDS returns pertaining to the period prior to 01/06/2015, if filed after 01/06/2015 and processed after 01/06/2015 whether they attract the amended provisions of Finance Act, 2012 and the specific provision for levy of “fee” under section 234E of the Act which was inserted w.e.f 1/6/2015. In the present case the due date for filing its TDS statement for the Q1 of FY 2014-15 in Form No. 26Q is 30/06/2014 which falls within the specified date of 1/6/2015 i.e., insertion of the new provisions but the assessee filed its TDS returns on 27/11/2015 i.e., beyond the due date for filing the TDS returns. The Ld. AO treating this filing / furnishing of TDS statement as a default since it is not filed within the stipulated time as per the TDS provisions and imposed late fees u/s. 234E amounting to Rs. 1,00,000/- and passed order U/s. 200A of the Act dated 01/12/2015. On appeal, the Ld. CIT(A) dismissed the appeal of the assessee due to belated filing of the appeal and held that the reasons given by the assessee do not constitute sufficient and reasonable cause for the belated filing of the appeals. Aggrieved by the order of the Ld. CIT(A), the assessee filed the present appeals.*

*9. In the present case, to file the TDS return for the FY 2014-15, Quarter-1 relevant to the AY 2015-16 is 30/06/2014 but the assessee filed the return on 27/11/2015. In our considered view since the enabling provision for computation of fee while processing the statements was inserted in section 200A only w.e.f 1/6/2015 and therefore, the charging section i.e., section 234E cannot be enforced to the cases prior to 1/6/2015. Further, we are of the view that the amended provision applies for all the returns pertaining to the period after 1/6/2015 and not for the returns pertaining to the period prior to 01/06/2015 notwithstanding the fact that the returns pertaining to the period prior to 01/06/2015 were filed after 01/06/2015 or processed after 01/06/2015.*

*10. The Hon’ble Karnataka High Court in the case of Fatheraj Singhvi vs. Union of India [2016] 73 taxmann.com 252*

*(Karnataka) observed that “one may at the first blush say that, since the section 234E is a charging section for fee, the liability was generated or had accrued, if there was failure to deliver or cause to be delivered the statement/s of TDS within the prescribed time. But section 234E cannot be read in isolation and is required to be read with the mechanism and the mode provided for its enforcement.....”. The observations and relevant held portions in the judgment of the Hon’ble Karnataka High Court (supra) are extracted herein below for reference:*

*"21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances, we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.*

*22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (f) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by*

*the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the deductor to reopen the said question unless he has made payment under protest."*

11. Further, the Hon'ble Kerala High Court in the case of *United Metals vs. ITO (TDS)* reported in [2022] 137 taxmann.com 115 (Kerala) observed as under:

*"Amendment in section 200A by way of incorporating sub-clause (c) to clause (f) which referred to computation of fee payable under section 234E was brought into effect from 1/6/2015, therefore, demand raised for levying late fee under section 234E for period prior to 1/6/2016 would not be sustainable."*

12. The Pune Bench of the Tribunal vide its order dated 25/10/2018 in the case of *Medical Superintendent Rural Hospital, Nashik vs. DCIT, CPC (TDS)* (supra), has observed as under:

*"16.....the Assessing Officer while processing TDS returns / statements for the period prior to 01/06/2015 was not empowered to charge late filing fees under section 234E of the Act, even in the cases where such TDS returns were filed belatedly after June, 2015 and even in cases where the Assessing Officer processed the said TDS returns after June, 2015. Accordingly.....the demand raised by charging late filing fee u/s 234E of the Act is not valid and the same is deleted."*

13. Now, coming to the facts of the instant case before me, the assessee had deducted tax at source U/s. 195 of the Act but belatedly filed the returns on 27/11/2015 under the bonafide intention that the amended provisions will not attract for levy of late fee U/s. 234E of the Act since the due date for filing the returns for Q1 of FY 2014-15 is 30/06/2014. Since the period under consideration is the 1<sup>st</sup> Quarter of FY 2014-15 ie., prior to the amendment to section 200A(1) of the Act wherein clause (c) was inserted w.e.f 01/06/2015 and the assessee had already deposited the tax at source prior to the amendment to section 200A(1), the levy of late fee u/s. 234E for default in furnishing the statement beyond the stipulated time is not sustainable in law. Further, respectfully following the ratio laid down in the judgment delivered by the Hon'ble Karnataka High Court in the case of *Fatheraj Singhvi* (supra); judgment of the Kerala High Court in the case of *United Metals* (supra) and various decisions of the Tribunal (supra), I am of the view that the levying of late fee under section 234E for the period prior to 1/6/2015 is not sustainable in law.

14. Thus, in the instant case since the period of default was before the said date ie., 01/06/2015, there is no merit in charging late filing fee U/s. 234E of the Act. Accordingly the Ld. AO is directed to delete the fee levied U/s. 234E of the Act in the order passed U/s. 154 r.w.s 200A of the Act Thus, the grounds raised by the assessee are allowed.

15. With respect to **ITA Nos.191, 192 & 193/Viz/2022**, the grounds of appeal as well as the issue raised in these three appeals are identical to that of the grounds and the issue raised in the appeal **ITA No. 190/Viz/2022**, which is adjudicated in the above paragraphs of this order, our decision given thereof *mutatis mutandis* applies to the present appeals (ITA Nos. 191, 192 & 193/Viz/2022) also. Accordingly, the appeals filed by the assessee are allowed.

16. In the result, all the four appeals filed by the assessee are allowed.”

6. Respectfully following the decision of this Bench in the case of Mohammed Vaziruddin vs. ITO in ITA Nos. 190 to 197/Viz/2022, dated 15/12/2022 (supra) as well as considering the identical facts of the instant case with that of the facts involved in the case of Mohammed Vaziruddin (supra), we have no hesitation to come to a conclusion that in the instant case since the period of default was before the said date ie., 01/06/2015, there is no merit in charging late filing fee U/s. 234E of the Act. Accordingly the Ld. AO is directed to delete the fee levied U/s. 234E of the Act in the order passed U/s. 154 r.w.s 200A of the Act Thus, the grounds raised by the assessee are allowed.

7. In the result, appeal filed by the assessee is allowed.

**ITA Nos. 457 & 458/Viz/2024**  
**(AY 2015-16)**

8. The issues involved in these two appeals filed by the assessee as well as the facts of the case are similar to that of the assessee's case in ITA no. 456/Viz/2024 (AY 2014-15), which is adjudicated in the foregoing paragraphs this order. Therefore, our decision given while adjudicating the assessee's appeal for the AY 2014-15 (supra) *mutatis mutandis* applies to these two appeals (ITA No. 457 & 458/Viz/2024) for the AY 2015-16 also. Thus, these appeals filed by the assessee are allowed.

9. Ex-consequenti, all the three appeals filed by the assessee are allowed.

Pronounced in the open Court on 31<sup>st</sup> January, 2025

Sd/-  
(एस बालाकृष्णन)  
(S.BALAKRISHNAN)  
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
उपाध्यक्ष /VICE PRESIDENT

Dated :31/01/2025  
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Government Polytechnic College, Kancharapalem, Visakhapatnam, Andhra Pradesh-530007.

2. राजस्व/The Revenue – Income Tax Officer, TDS Ward-1, O/o. ITO, Aayakar Bhavan, Dabagardens, Visakhapatnam, Andhra Pradesh-530020.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam