

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH:COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA Nos.287 & 288/Coch/2025
AssessmentYears:2021-22 & 2022-23

Dhusan Motors Private Limited 7/239-1,2,3, JMR Complex Kannur Thottada SO Kannur Kerala 670007 TAN NO : CHND02955B	Vs.	ITO Ward-TDS Kannur
APPELLANT		RESPONDENT

Appellant by	:	Shri Riju AC, A.R.
Respondent by	:	Smt. Leena Lal, Sr. D.R.

Date of Hearing	:	29.05.2025
Date of Pronouncement	:	23.06.2025

O R D E R

PERPRAKASH CHAND YADAV, JUDICIAL MEMBER:

Both these appeals of the assessee are arising from the orders of Id. CIT(A) both dated 24.2.2025 having DIN & Order No. ITBA/NFAC/S/250/2024-25/1073613861(1) which relates to the AY 2021-22 and DIN & Order No. ITBA/NFAC/S/250/2024-25/1073614315(1) which relates to AY 2022-23. Since the issue involved in these appeals is regarding the chargeability of interest u/s 234E of the Income Tax Act, 1961 (in short "The Act"), we are deciding these appeals by way of this consolidated order for the sake of convenience.

2. Brief facts of the case as coming out from the orders of the authorities below are that the assessee is a Private Limited

company and engaged in the business of trading of commercial vehicles by way of authorized dealership M/s. SML Isuzu. For AY 2011-22, the assessee has deducted TDS on various payments made by the assessee and duly deposited with the government with interest wherever it is applicable. Thereafter, due to Covid-19 pandemic, the assessee was not able to file the quarterly TDS return for the impugned assessment year. In this backdrop, the CPC levied a late fee u/s 234E of the Act amounting to Rs.1,99,230/- for the AY 2021-22 and an amount of Rs.15,800/- for the AY 2022-23.

3. Aggrieved with the order of CPC, assessee filed appeal before Id. CIT(A) and inter-alia argued that the Id. CIT(A)/NFAC has not considered the specific circumstances while upholding levy of late fees of Rs.1,99,230/- with respect to the delay in filing the TDS return. It is next contended that levy of interest u/s 234E of the Act is not a mandatory in all cases. However, the Id. CIT(A) affirmed the order of CPC.

4. Aggrieved with the order of Id. CIT(A), the assessee has come up in appeal before us.

5. Counsel for the assessee reiterated the submissions made before the lower authorities.

6. Ld. D.R. appearing on behalf of the revenue relied upon the orders of the authorities below.

7. We have heard the rival submissions and perused the materials available on record. We are of the view that charging of interest u/s 234E of the Act is mandatory. Reference can be made to the judgement of Hon'ble Madras High Court in the case of

Conceria International Pvt. Ltd. Vs. ITO reported in 157 taxmann.com 335 (2023), wherein Hon'ble High Court in para 7.2 while discussing the provisions of section 234E of the Act has observed as under:

“With the above overview of section 234 E of the Act and on considering both the above views, it appears to me that the opinion expressed by the Gujarat High Court that section 234E of the Act by itself creates a liability and the liability to pay the late fee is not dependent on section 200A(1)(c) of the Act which only prescribes the recovery mechanism reflects the true intent and purpose of section 234E of the Act. Section 234E of the Act which provides for late fee is the substantive provision and the levy is not dependent on section 200A 1 c of the Act which only prescribes a recovery mechanism. A reading of section 234E of the Act would make it clear that it gets attracted, the moment there is a failure on the part of a person to deliver or cause to be delivered, statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. The person committing the above breach/infracton renders himself liable to pay by way of fee a sum of Rs. 200 everyday during which the failure continues. Sub-section (3) in fact provides for a self assessment/payment of the fee while delivering or causing to deliver a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. Sub-section (4) to section 234E of the Act also makes it clear that the above provision would be effective from 1-7-2012. Therefore the submission that 234E of the Act would not be operable/effective unless and until section 200A(1)(c) was introduced overlooks the fact that section 234E (1) of the Act is the substantive provision and section 234E(3) of the Act provides for a self declaration/payment for the delay in complying with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C of the Act. With due respect I am unable to subscribe to the view expressed by the Karnataka High Court in view of the reasons stated supra.”

7.1 We are aware of the judgement of Hon'ble jurisdictional High Court in the case of G.G. Verghese Vs. ITO reported in 139 taxmann.com 339, wherein the jurisdictional high court while interpreting the provisions of section 234E of the Act has observed that these provisions are prospective in nature and cannot be applied prior to 1.6.2015. However, the present assessment years before us are 2021-22 & 2022-23. Therefore, we are of the view that the CPC is correct in charging late fees u/s 234E of the Act. In

view of the above both these appeals of the assessee stand dismissed.

8. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 23rd June, 2025

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Prakash Chand Yadav)
Judicial Member

Bangalore,
Dated 23rd June, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Cochin.
5. Guard file

By order

Asst. Registrar,
ITAT, Cochin.