आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.560, 561 & 562/RPR/2025

निर्धारण वर्ष / Assessment Year : 2014-15

Padma Parakh
Parakh Nursing Home,
Lal Bagh, Rajnandgaon-491 441 (C.G.)
PAN: AJQPP8601H

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (TDS),
Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by	:	None (written submission)
Revenue by	:	Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.10.2025

घोषणा की तारीख / Date of Pronouncement : 15.10.2025

आदेश / ORDER

PER BENCH:

The captioned appeals preferred by the assessee emanates from the respective orders of the Ld. CIT(Appeals)/NFAC, dated 30.07.2025 for the A.Y.2014-15 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. However, written submission was filed. The matters were heard after recording the submissions of the Ld. Sr. DR and on careful perusal of the written submissions a/w. material available on record.

3. As the facts and issues involved in the captioned appeals are absolutely similar, therefore, these matters are heard together and disposed of vide this consolidated order.

4. The relevant facts in these cases are that the assessee is a proprietor of a nursing home in the name and style of Parakh Nursing Home providing health care facilities and other related services. That during the F.Y.2013-14, relevant to A.Y.2014-15, there was delay in filing TDS statements and accordingly, the department had levied late filing fees u/s. 234E of the Income Tax Act, 1961 (for short 'the Act'). This is the common grievance with regard to all these three appeals before us. In this regard, the question arises as per the captioned matters that whether the Ld.

CIT(Appeals)/NFAC was justified in dismissing the appeals of the assessee against the levy of fees u/s. 234E of the Act for belated filing of TDS statements for A.Y.2014-15 amounting to Rs.7080/-, Rs.13,911/- and Rs.15,530/-, respectively.

5. In this regard, the assessee submitted through written submission placing reliance on various judicial pronouncements of the Hon'ble Supreme Court of India as well as Hon'ble High Courts that the provision of levying late fees u/s.234E r.w.s.200A was introduced vide the Finance Act, 2015 w.e.f. 01.06.2015 applicable from A.Y.2016-17 and therefore, prior to that the department did not have any power to impose such fees u/s.234E of the Act. In other words, there is no retrospective application of the enabling provision for imposing late filing fees by the department prior to 01.06.2015.

6. Per contra, the Ld. Sr. DR placed strong reliance on the findings of the Ld. CIT(Appeals)/NFAC specifically on the judgment of the Hon'ble High Court of Bombay in the case of Mr. Rashmikant Kundalia and Anoher Vs. Union of India & Anrs., Writ Petition No.771 of 2014, dated 09.02.2015.

7. We find that all these cases raise a common question of applicability of Section 234E of the Act i.e. imposition of late fees before 01.06.2015 i.e.

the relevant date of amendment in Section 200A of the Act. It is, therefore, proposed to decide all these cases vide the present common order having heard the submissions of the Ld. Sr. DR and on careful perusal of the written submissions placed on record by the assessee. It is seen that prior to 01.06.2015, there was no enabling provision in the Act u/s. 234E for raising demand in respect of levy of fees u/s. 234E of the Act. The provision of Section 234E of the Act is charging provision i.e. substantive provision which could not be applied retrospectively, unless it is expressly provided in the Act, to levy the late fees for any delay in filing the TDS statement for the period prior to 01.06.2015. Therefore, in the absence of enabling provisions u/s. 200A of the Act, such levy of late fee is not valid. The **Hon'ble High Court of Karnataka** in the case of **Fatheraj Singhvi Vs. Union of India, 73 taxmann.com 252 (Kar.)** had held that the provisions of Section 234E of the Act are substantive in nature and the mechanism for computing the late fee was provided by the Parliament only w.e.f. 01-06-2015. Therefore, late fees u/s.234E of the Act can be levied only prospectively w.e.f. 01.06.2015. The relevant observation of the Hon'ble High Court in the case of Fatheraj Singhvi (supra) are extracted as follows :-

> "19. Hence, it can be said that, the mechanism provided for enforceability of Section 200(3) or 206C (3) for filing of the statement by making it penal under Section 272A (2) (k) is done away in view of the insertion of Section 271H providing for penal provision for such failure to submit return. When the Parliament has simultaneously brought about Section

234E, Section 271H and the aforesaid proviso to Section 272A(2), it can be said that, the fee provided under Section 234E is contemplated to give a privilege to the defaulter to come out from the rigors of penalty provision under Section 271H (1) (a) if he pays the fee within one year and complies with the requirement of sub-section (3) of Section 271H.

20. In view of the aforesaid observations and discussion, two aspects may transpire one, for Section 234E providing for fee and given privilege to the defaulter if he pays the fee and hence, when a privilege is given for a particular purpose which in the present case is to come out from rigors of penal provision of Section 271H(1)(a), it cannot be said that the provisions of fee since creates a counter benefit or reciprocal benefit in favour of the defaulter in the rigors of the penal provision, the provisions of Section 234E would meet with the test of quid pro quo.

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.

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2015 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted

for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent.

25. As such, as recorded earlier, it is on account of the intimation received under Section 200A for making computation and demand of fees under Section 234E, the same has necessitated the appellant to challenge the constitutional validity of Section 234E. When the intimation of the demand notices under Section 200A is held to be without authority of law so far as it relates to computation and demand of fee under Section 234E, we find that the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise because there would not be any cause on the part of the petitioners to continue to maintain the challenge to constitutional validity under Section 234E of the Act. At this stage, we may also record that the learned counsels appearing for the appellant had also declared that if the impugned notices under Section 200A are set aside, so far as it relates to computation and intimation for payment of fee under Section 234E, the appellant-petitioners would not press the challenge to the constitutional validity of Section 234E of the Act. But, they submitted that the question of constitutional validity of Section 234E may be kept open to be considered by the Division Bench and the Judgment of the learned Single Judge may not conclude the constitutional validity of Section 234E of the Act.

26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to 01.04.2015 is permitted to be

> reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge."

8. The ratio of the above judgment was followed by the Co-ordinate Bench of the Tribunal, Pune in the cases of **(i)** Gajanan Constructions v. DCIT, 73 taxmann.com 380 (ITAT Pune); **(ii)** Maharashtra Cricket Association, Pune vs. DCIT, 74 taxmann.com 6 and **(iii)** Webtrust Co. Inc (India) Pvt. Ltd. ACIT, CPC (TDS) in ITA Nos.1818 & 1819/PUN/2018 for Assessment Years 2013-14 & 2014-15, order dated 02.11.2021 as well as the decision of the Co-ordinate Bench of the Tribunal, Raipur in the case of EE RES Division Rajnandgaon, Collectorate Vs. The DCIT (CPC/TDS), Ghaziabad, ITA Nos. 255 to 257/RPR/2022, dated 08.08.2023.

9. We also herein put on record that the decision rendered by the Hon'ble Bombay High Court in the case of Rashmikant Kundalia and Others (supra) does not come to the rescue of the Revenue, inasmuch as, the Hon'ble High Court had only upheld the constitutional validity of the provisions of section 234E of the Act. The Hon'ble High Court had not gone into the issue of retrospective operation of provisions of section 234E of the Act. Hence, the said decision relied upon by the revenue is misplaced so far as the facts of the assessee's case are concerned.

10. It is an undisputed fact that the provisions of Section 234E of the Act was originally brought into the statute w.e.f. 01.07.2012 vide the Finance Act, 2012. However, un-amended provisions of Section 200A of the Act were not to provide power to the officers to charge the levy of late filing fees. However, with the amendment in Finance Act, 2015 to Section 200A of the Act w.e.f. 01.06.2015, enabled the A.O to levy late filing fees for default of late filing of TDS statements. Therefore, there is no dispute about non availability of such powers to the department in the quarters for period prior to 01.06.2015. In other words, the A.O had no jurisdiction to charge late fees u/s. 234E of the Act for the reason that there was no enabling procedure for computation of late fees u/s. 200A of the Act. The computation of late fees was inserted vide the Finance Act, 2015 w.e.f 01.06.2015 and since the amendment is prospective in nature, therefore levy of late fees u/s. 234E r.w.s. 200A of the Act is not maintainable in the present case since it pertains to F.Y.2013-14 relevant to A.Y.2014-15 which is prior to the period of 01.06.2015, i.e. F.Y.2015-16 relevant to A.Y.2016-17.

11. In view of the settled legal proposition as laid down by the Hon'ble High Court of Karnataka (supra), we find no merit in the observations of the Ld. CIT(Appeals)/NFAC. The Ld. CIT(Appeals)/NFAC has clearly overlooked the fact that there cannot be any mechanism with the

department for charging late filing fees as per Section 234E of the Act prior to 01.06.2015. In view of the aforesaid facts and circumstances, we direct the A.O (TDS/CPC), Ghaziabad to delete the late fees levied u/s. 234E of the Act from the assessee for all quarters as emanating from the captioned assessment years.

12. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open court on 15th October, 2025.

Sd/-	Sd/-
ARUN KHODPIA	**PARTHA SARATHI CHAUDHURY**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

रायपुर/ RAIPUR ; दिनांक / Dated : 15th October, 2025.
SB, Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी /The Appellant.
2. प्रत्यर्थी /The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.