

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER

ITA No. 647/Ind/2024
Assessment Year: 2014-15

Kendriya Vidyalaya Barwani M. P. Principal Kendriya Vidyalay Moddle Scool Campus Barwani M.P.	<u>बनाम/</u> <u>Vs.</u>	DCIT CPC-TDS Ghaziabad
(Assessee/Appellant)		(Revenue/Respondent)
TAN: BPLK02605B		
Assessee by	Shri Jahangir Khan, AR	
Revenue by	Shri Ashish Porwal, Sr.DR	
Date of Hearing	17.03.2025	
Date of Pronouncement	19.03.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the Assessee Under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as the Act for sake of brevity) before this Tribunal as and by way second appeal. The assessee is aggrieved by order bearing Number ITBA/NFAC/S/ 250/2024-25/1067167035(1) dated 31.07.2024 passed by Ld. CIT(A), passed U/s 250 of the Act which is

hereinafter referred to as the "impugned order". The relevant Assessment Year is 2014-15 and the corresponding previous year period is from 01.04.2013 to 31.03.2014.

2. **FACTUAL MATRIX**

2.1 That as per the data available in ITBA, the First appeal in terms of section 246A of the Act was filed online on 05.03.2024.

2.2 Facts giving rise to the aforesaid First Appeal under the Act are that the assessee is a organization of Government of India in the field of school education.

2.3 That it had filed its regular TDS return form 24Q for quarter-4 of the Financial year 2013-14 on 07.07.2014 vide Acknowledgment number:-141819600001763 **belatedly** against which order u/s 200A of the Act was passed on 10.07.2014. Subsequently, the same was revised on and an order u/s 154 r.w.s. 200A of the Act was passed in the impugned case on 27.12.2023 and served on **09.02.2024** levying late fees u/s 234E

and interest thereupon u/s 220(2) of the Act by resulting into a total demand of **Rs.22,790/-**.

2.4 The DCIT(CPC) subsequently passed order under section 154 read with section 200A of the Income Tax, 1961 dated on 09.02.2024 and determined demand on account of **late filing fee** under section **234E** of the Income Tax Act, 1961 of **Rs.10,600/-** for quarter **24Q-4** for the Financial year 2013-14 relevant to Assessment year **2014-15** which according to the assessee in any case is **neither legal nor proper**.

2.5 The DCIT(CPC) subsequently passed order under section 154 read with section 200A of the Income Tax, 1961 dated on **09.02.2024** and determined on **account of interest** under **section 220(2)** of the Income Tax Act, 1961 the amount of **Rs.12,190/-** for quarter **24Q-4** for the Financial year 2013-14 relevant to Assessment year 2014-15 which according to assessee in any case is neither **legal nor proper**.

2.6 That the assessee challenged the aforesaid issues (P-2 of appeal memo) by filing a first appeal before CIT(A) u/s 246A of

the Act on broad issues of late filing fees of Rs.10,600/- u/s 234E of the Act and charging interest u/s 220(2) of the Act of Rs.12190/- on the ground that facts of the case are not well appreciated by the Assessing officer.

2.7 That the Ld. CIT(A) by impugned order has dismissed the 1st Appeal of the assessee as being not admitted basis reasons specified in the Impugned order.

2.8 That the assessee being aggrieved by the "Impugned order" has preferred second appeal before this Tribunal and has raised following grounds of appeal in form no.36 against the Impugned order which are as under:

"1. That the Ld. CIT(A) NFAC further erred in not noninbadmitting the appeal by mentioning that the Assessment order, demand notice and challan for demand notice were duly uploaded and the details of challan and payment were feeded in item No. 16 of Form-35 in the absence of which, Form-35 could not had been uploaded.

2. That under the facts and circumstances Ld. CIT(A) erred in law on merits in deciding the appeal ex-parte only after issuing notice of hearing for 18.05.2024, for which submission of appeal rejoinder stood filed on 03.06.2024 and was not noted by the CIT(A), however neither appeal rejoinder rejected, nor any further date given and synbralso no communication informing the fact of the communication to

the appellant, thus, no proper and reasonable opportunity of hearing has been allowed by CIT(A).

3. That on the fact and in the circumstances of the case and in law, the Id DCIT(CPC)-TDS erred in levying late filing fee under section 234E of the Income Tax, 1961 of Rs. 10,600/- for Quarter -4 of financial Year 2013-14 respectively without proper appreciating the facts of the case.

4. That on the facts and in the circumstances of the case and in law, the Ld DCIT(CPC)-TDS erred in charging interest under section 220(2) of the Income Tax Act, 1961 of Rs. 12,190/- for Quarter -4 of financial Year 2013-14, respectively without properly appreciating the facts of the case.

5 That under the facts and circumstances Ld. CIT(A) NFAC erred in not adjudicating the appeal on merits.

6 That the appellant craves leave to add, to alter, amend. Modify, substitute, delete and/or rescind all of any of the ground of appeal on or before final hearing, if necessity so arises."

3. Record of Hearing

3.1 That the hearing in the matter took place before us on 17.03.2025 when the Ld. AR for and on behalf of the assessee school appeared and interalia contended that school is controlled fully by Government of India. It is a prestigious school under umbrella organisation called "**Kendriya Vidyalaya Sanghathan**" at **New Delhi**. The Ld. AR has placed on record of this Tribunal a

paper book containing pages 1 to 53. The Ld. AR has contended that the "Impugned Order" is totally bad in law and illegal. It deserves to be set aside. It was contended that Ld. CIT(A) in the impugned order has incorrectly observed that Form no.35 is not filed properly, there are no statement of facts, no grounds of appeal, no application for condonation of delay, no particulars of appeal fee, no order against which appeal is preferred is enclosed hence since these defects are not rectified by the assessee despite notice to them, the appeal is **dismissed being not admitted**. The Ld. AR on the contrary has contended that there was no such defects (supra) and that finding is wrongly recorded by the Ld. CIT(A) in the Impugned order. The Ld. AR invited our attention to page 20 of PB to a notice dated 18.05.2024 wherein certain **requisitions** were made by Ld. CIT(A) to the assessee and the assessee by a reply of page 24 of PB duly complied with all the requisitions.

3.2 Per contra Ld. DR for and on behalf of the assessee has contended that revenue would not have any serious objection if the matter is remanded back to the file of CIT(A) and in this

regard this Tribunal may be pleased to pass such orders as it thinks fit in given facts and circumstances of the case according to law.

4. Observations & findings & conclusions

4.1 We now have to examine the legality, validity and propriety of the "impugned order" basis records of the case.

4.2 We have carefully perused the papers and documents on record and have examined the rival contentions.

4.3 We are of the considered opinion that the assessee has filed form no.35, which is at P3 of Appeal memo and so **also in it** there are statement of facts and grounds of appeal. Copy of demand notice and appeal fees challan are relied upon too. Appeal fees of Rs.250 is too paid. Impugned orders against which first appeal is preferred finds mentions in column 4 of form 35 further details of fee paid is mentioned in serial no.16 of form no.35.

4.4 In the premises self-out hereinabove, Ld. CIT(A) ought to have carefully perused the form 35 including reply to notice dated 18.05.2024 at page 24 of PB when the assessee had complied with requisitions so made and ought not to have went ahead and **dismissed** the first appeal as **not admitted**.

4.5 We, therefore, set aside the Impugned order and remand the case back to the file of CIT(A) with a direction to decide the first appeal on meritorious ground as is mandated by law.

5.

Order

5.1 In result-Impugned order is set aside as and by way of remand on denovo basis.

5.2. In result, appeal is allowed for statistical purpose.

Order pronounced in open court on 19.03.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 19 /03/2025
Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore