

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH
AT KOLKATA**

**Before Shri George Mathan, Judicial Member and
Shri Rakesh Mishra, Accountant Member**

**ITA Nos.178 to 180/Kol/2026
Assessment Years: 2013-14 to 2015-16**

**Kaushalya Infrastructure Development Corporation Ltd.....Appellant
HB-170, Sector III, Salt Lake, Bidhan Nagar IB Market,
S.O Salt Lake, North 24 Parganas,
W.B – 700106.
[PAN: AACCK1581F]**

vs.

ITO, Ward-2(1), TDS, Kolkata.....Respondent

Appearances by:

Shri Miraj D. Sha, appeared on behalf of the Appellant.

Shri Pradip Kumar Biswas, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 13, 2026

Date of pronouncing the order : April 13, 2026

ORDER

Per Bench:

This is a batch of three appeals filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals), ADDL/JCIT (A), Panaji [hereinafter referred to as “the Ld. CIT(A)”] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) in Appeal Nos. NFAC/2011-12/10384523, NFAC/2011-12/10384523, NFAC/2013-14/10384527 all dated 19.11.2025, for the Assessment Years 2013-14 to 2015-16 respectively.

2. Shri Miraj D. Sha, AR, represented on behalf of the assessee and Shri Pradip Kumar Biswas, Sr. DR represented on behalf of the revenue.

3. It was submitted by the Id. AR that the provisions of section 200A(1)(c) for the purpose of levying fee u/s 234E came into effect from 01.06.2015. It was the submission that consequently, for the period before 01.06.2015, no fee u/s 234E is liable to be levied. It was the submission that this fee u/s 234E which has been levied during the processing of the return and intimation issued before 01.06.2015 is liable to be quashed. He placed reliance on the decision of Hon'ble Madras High Court in the case of Lingeswara Creations vs. PCIT reported in [2024] 168 taxmann.com 383 (Madras) wherein Hon'ble Madras High Court held as follows:

"In the present case, the respondent had imposed the late fee only under section 234E for the assessment years 2012-2013, 2013-2014. However, section 200A was not introduced during the said assessment years and it was introduced only with effect from 01.06.2015. Therefore, in the absence of any provisions under Section 200A. the respondents ought not to have imposed late fee under Section 234E while processing the applications for TDS under Section 200A. Hence, in such view of the matter, this Court is of the opinion that the impugned Demand Intimation Letters are liable to be set aside. [Para 4]"

4. He also placed reliance on the decision of Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. UOI reported in [2016] 73 taxmann.com 252 (Karnataka) wherein Hon'ble Karnataka High Court held as follows:

"Section 234E has come into force on 1.7.2012. Therefore, one may at the first blush say that, since 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, in our view, Section 234E cannot be read in isolation and is required to be read with the mechanism and the mode provided for its enforcement. As observed by us hereinabove, when

Section 234E was inserted in the Act simultaneously, Section 271H was also inserted in the Act providing for the penalty for failure of furnishing of statements etc. Therefore, if there was failure to submit the statement for TDS as per Section 234E, the fee payable is provided but the mechanism provided was that if there was failure to furnish statements within the prescribed date, the penalty under Section 271H (1) and (2) could be imposed. However, under sub-section (3) of Section 271H, the exception is provided that no penalty shall be levied for the failure referred to under clause (a) of sub-section (1) if the person proves that after paying TDS with the fee and interest the amount is credited and he had delivered or caused to deliver the statement within one year from the time prescribed for submission of the said statement. To put it in other words, for failure to submit the statements, the penalty provided under Section 271(1)(a) cannot be imposed if the deductor complies with the requirement of sub-section (3) of Section 271H. Hence, it can be said that the fee provided under Section 234E would take out from the rigors of penalty under Section 271H but of course subject to the outer limit of one year as prescribed under sub-section (3) of Section 271H. It can also be said that when the Parliament intended to insert the provisions of Section 234E providing for fee simultaneously the utility of such fee was for conferring the privilege to the defaulter deductor to come out from the rigors of penal provision of Section 271H. Be it recorded that, prior to Section 271H of the Act inserted in the statute book, the enforceability of requirement to file return under Section 200(3) and Section 206C(3) was by virtue of Section 272A(2)(k) of the Act which provided for the penalty of Rs.100/- per day for each day of default in filing TDS statements. But, when Section 234E was inserted with effect from 1.7.2012 simultaneously, a second proviso was added under Section 272A(2) with effect from 1.7.2012. [para 17]”

4.1 Similar is decision of Hon’ble Kerala High Court in the case of United Metals vs. ITO reported in [2022] 137 taxmann.com 115 (Kerala). The ld. AR also relied on the decision of Coordinate Bench of this Tribunal in the case of ITO vs. Maa Tarini Transport Pvt. Ltd. in ITA Nos.454&455/CTK/2024 order dated 07.01.2025, wherein it was held as under:

“6. We have considered the submissions of ld Sr DR. We find that the ld CIT(A) while deleting the levy of fees has observed as under: “The Finance Act 2015, with effect from 1.6.2015, amended Section 200A sub-section(1) by substituting clauses (c) to (e) to (f) thereby enabling charging of fee under section 234E. Therefore, prior to 1.6.2015, there was no enabling provision in section 200A of the Act for making adjustment in respect of the statement filed by the appellant with regard to tax deducted at source by levying fee under section 234E. Thus, while processing statement u/s.200A, the AO could not have made any

adjustment by levying fee u/s.234E prior to 1.6.2015. This opinion has also been upheld by –

(i) ITAT E Bench Chennai in ITA No.1019,1020 and 1021/MDS/2015 in the case of Smt. G.Indhirani

(ii) ITAT Amritsar bench in the case of Sibia Healthcare Pvt Ltd. Vs DCIT order dated 9.6.2015

(iii) Cuttack Bench in TB & ID Hospital in ITA No.323/CTK/2018 order dated 27.8.2018.

7. We find that the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench in the case of TB & ID Hospital in ITA No.323/CTK/2018 order dated 27.8.2018 and 2011-12 and there is no change in facts and law. The findings recorded by the ld.CIT(A) in this regard have also not been dislodged by the revenue. We also find that there are conflicting views rendered by different High Courts in respect of charging of late fee u/s.234E of the Act. Ld Sr DR could not place any decision of the Hon'ble Jurisdictional High Court on this issue. Hence, we concur with the findings of the ld CIT(A) in deleting the charging of late fee u/s.234E and uphold the same. Consequently, we dismiss the appeals filed by the revenue.”

4.2 It was the prayer by the ld. AR that the fee levied u/s 234E may be deleted.

5. In reply, the ld. Sr. DR vehemently supported the orders of the Assessing Officer and ld. CIT(A).

6. We have heard the rival submissions. As it is noticed that the issues are now squarely covered by the decisions of Hon'ble Madras High Court in the case of Lingeswara Creations vs. PCIT, Hon'ble Karnataka High Court in the case of Fatheraj Singhvi v. UOI and Hon'ble Kerala High Court in the case of United Metals vs. ITO reported in [2022] 137 taxmann.com 115 (Kerala) referred to supra and Coordinate Bench of this Tribunal in the case of ITO vs. Maa Tarini Transport Pvt. Ltd. and no decision contrary to the said decisions have been brought to our

attention, respectfully following the decisions stated supra, the fee levied u/s 234E in all the captioned appeals stands deleted.

7. In the result, all the captioned appeals of the assessee are allowed.

Kolkata, the 13th April, 2026.

Sd/-
[Rakesh Mishra]
Accountant Member

Sd/-
[George Mathan]
Judicial Member

Dated: 13.04.2026.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches