

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"F" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2371/Mum/2025**  
**Assessment Year: 2017-18**

<b>M/s. J Duncan Healthcare Pvt. Ltd.</b> IT & Admin Office Address: A-345, Road No. 34, Wagle Industrial Estate Opp. Wagle Bus Depot Thane - 400604 <b>[PAN: AABCD2256M]</b>	<b>Vs</b>	<b>Addl. JCIT(A)-2</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Awadesh Kumar, A/R
Revenue by :	Ms. Kavita P. Kaushik, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 25/06/2025  
घोषणा की तारीख /Date of Pronouncement: 27/06/2025

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order of the ld. Addl./JCIT(A)2, Chandigarh [hereinafter "the ld. CIT(A)"] dt. 13/03/2025 pertaining to AY 2017-18.

2. The grievance of the assessee reads as under:-

*"(a). On the facts and in the circumstances of the case and in law, the Learned JCIT has eared in confirming the late fees u/s 234E of Rs. 1,16,000/-.*

*(b). That Learned JCIT has eared in not appreciating the facts that, the Russian parties were not having PAN in India and therefore tax was deducted @ 10% from the fees to be paid for rendering services in Russia. The deduction of TDS was made before rendering of services and before the payment was made as the company is maintaining accounts on mercantile basis.*

*(c). That Learned JCIT has eared in not appreciating the facts that, the services were not rendered by the foreign parties therefore the accounts were reversed.*

*(d). That Learned JCIT has eared in not appreciating the facts that, the refund of TDS could not have claimed by the company as the TDS was made in respect of payment to be made to the foreign parties.*

(e). *The appellant craves leave to amend, alter or delete any of the above grounds of appeal."*

3. Briefly stated the facts of the case are that the assessee debited payments to JSC OLS Ltd. of Rs. 74,66,667/- and deducted tax at source of Rs. 7,46,667/-. The assessee also debited payment to JSC Viterani Rs. 68,46,311/- on which tax was deducted at Rs. 6,84,631/-.

4. Since the payees do not have PAN, therefore, the returns of TDS could not be filed because of its non-acceptance for want of PAN. At the end of the financial year i.e., 31/03/2017, the assessee reversed the entries and did not claim any payment to JSC OLS Ltd. and JSC Viternai. Since no payments were made to the two parties there was no question of deducting tax at source and, therefore, there was no question of filing of any TDS return.

5. On peculiar facts of the case, we do not find any reason why late filing fee u/s 234E of the Act should be levied on the assessee. We accordingly direct the AO to cancel the levy of fee and delete the addition of Rs.1,16,000/-. Accordingly, Ground Nos. (a), (b) & (c), are allowed.

6. Insofar as, Ground No. (d) is concerned, there is no provision under the Act where the assessee can claim refund of TDS on the amount not paid by him. Therefore, Ground No. (d) is dismissed.

7. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Court on 27<sup>th</sup> June, 2025 at Mumbai.**

Sd/-  
(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

Sd/-  
(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 27/06/2025

*Sd/-*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai