IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10887 of 2014

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Ajit Kumar Singh S/o Sri Amrendra Kumar Singh, H.No. A/18, Abhiyanta Nagar, Ashiana Nagar, P.S. Rajiv Nagar, Patna - 800025 Bihar

... ... Petitioner/s

Versus

1. The Union Of India, New Delhi, Represented by the Secretary to the Govt. of India, Finance Department, New Delhi- 110001
2. Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Govt. of India,
3. Commissioner of Income Tax (TDS) 6th Floor, Central Revenue Building (Annexie) , Bir Chand Patel Path, Patna - 800 001 Bihar
4. Commissioner of Income Tax Central Revenue Building, Patna
5. Deputy Commissioner of Income Tax Centralized Processing Cell - TDS, Aaykar Bhawan, Sector - 3, Vaishali Ghaziabad - 201010 Uttar Pradesh

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Aman Raja, Advocate
For the Respondent/s : Mrs. Archana Sinha @ Archana Shahi, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-08-2020

Petitioner has prayed for the following relief(s):

> "For a declaration that the section 234E of the Income Tax Act, 1961 (hereinafter called as 'the Act') as unconstitutional, ultra virus and against the rights guaranteed to the citizen of India under Articles 14 and 21 of the Constitution of India, whereas a fee for default in furnishing statement under heading Levy of fee in certain cases in chapter XVII-Collection and Recovery-Interest Chargeable, has been levied."

Before this Court two-fold submissions were made: (1) constitutional validity of Section 234E of the Income Tax Act, 1961 is challenged; (2) Initiation of proceedings under Section 200A of the Income Tax Act, 1961 is bad in law.

On the 1st issue, we do not find the petitioner having made out any case, for it cannot be said that the statute which reads as under:-

> "234E. **Fee for default in furnishing statements**. —(1) Without prejudice to the provisions of the Act, where a person fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C, he shall be liable to pay, by way of fee, a sum of two hundred rupees for every day during which the failure continues.
>
> (2) The amount of fee referred to in sub-section (1) shall not exceed the amount of tax deductible or collectible, as the case may be.
>
> (3) The amount of fee referred to in sub-section (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.
>
> (4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

was passed by a Legislature not having competence to do so or, in any way, offending Part-III of the Constitution of India.

Further, we find the issue to have been put at rest, squarely covered by three different courts in the Country. Reference in this connection may be made:- **(2015) 373 ITR 0268 (Bom), Rashmikant Kundailia and another v. Union of India; (2015) 235 Taxman 0410 (P &H), Dr. Amrit Lal Mangal v. Union of India; (2019) 413 ITR 0092 (Delhi), Biswajit Das v. Union of India & Ors.**

On the 2nd issue, the learned counsel fairly states that there is statutory remedy available with the petitioner which he is ready to take recourse to in accordance with law. However, the issue of limitation may not come in the way of the petitioner.

This apprehension of the petitioner, perhaps, is not well-founded for the simple reason that he has been pursuing the matter before this Court.

Also, Mrs. Archana Sinha states that if petitioner were to take recourse to such statutory remedy within a period of 30 days from today, the issue of limitation shall not come in the way nor raised in such proceedings, which shall be dealt with on merits, in accordance with law.

We clarify that the issue of limitation shall not come in the way of the petitioner, if such proceedings are initiated within a period of 30 days from today.

With the aforesaid observation, petition is disposed of.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2020
Transmission Date	