IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.2700 & 2703 of 2022
and
W.M.P.Nos.2874 & 2877 of 2022

M/s.True Blue Voice India Private Limited,
(Rep by its Director)
No.645, 1st Cross Street,
1st Main Road, 1st Floor,
Right Wing, Binnamangala,
Indiranagar,
Bengaluru 560 038
TAN:CHET09031B

... Petitioner in W.P.No.2700 of 2022

M/s.VOXTBV India P Ltd,
(Formerly known as M/s.Vox Spectrum P Ltd)
(Rep by its Director)
No.645, 1st Cross Street,
1st Main Road, 1st Floor,
Right Wing, Binnamangala,
Indiranagar,
Bengaluru 560 038
TAN:CHEV05310E

... Petitioner in W.P.No.2703 of 2022

Vs.

1.The Chief Commissioner of Income Tax-TDS, Chennai,
121, Nungambakkam High Road,
Nungambakkam, Chennai 600 034.

2.The Income Tax Officer,
TDS Ward – 3(3), Chennai,
Income Tax Department,
Room No.111, BSNL Building,
1st Floor, Door No.16,
Greams Road,
Thousand Lights,
Chennai 600 006.

3.The Deputy Commissioner of Income Tax,
Central Processing Cell-TDS,
Aayakar Bhawan, Sector-3,
Vaishali, Ghaziabad,
Uttar Pradesh 201 010.

... Respondents in both petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the writ petitioner company on the file of the respondents and to quash the impugned orders dated 24.09.2021 in DIN.Nos.ITBA/COM/S/91/2021-22/1035865330(1) and ITBA/COM/S/91/2021-22/1035864785(1) passed by the first respondent and to consequently direct the third respondent to delete the levy of fee under Section 234E of the Act for the period upto 01.06.2015.

For Petitioner
in both petitions : Mr.A.S.Sriraman

For Respondent
in both petitions : Dr.B.Ramaswamy
Senior Standing counsel

COMMON ORDER

These writ petition have been filed challenging the impugned orders dated 24.09.2021 in DIN.Nos.ITBA/COM/S/91/2021-22/1035865330(1) and ITBA/COM/S/91/2021-22/1035864785(1) passed by the first respondent and to direct the third respondent to delete the levy of fee under Section 234E of the Income Tax Act (hereinafter referred as “the Act”) for the period upto 01.06.2015.

2. The learned counsel for the petitioner would submit that Section 200A of the Act deals with the manner in which the statement of Tax Deducted at Source (TDS) shall be processed. Accordingly, the petitioner had filed the statement of TDS for the assessment years 2012-2013, 2013-2014, 2014-2015 and for the first quarter of 2015-2016 in accordance with the aforesaid provisions of Section 200A of the Act, for

which, the petitioner had received the intimation for processing of the said statement of TDS.

3. The case of the petitioner is that when the petitioner had processed the statement of TDS under Section 200A of the Act, the Authorities have no power to impose the late fee under Section 234E of the Act for the assessment years 2012-2013 to 2014-2015, since Section 200A(1)(c) of the Act was introduced only with effect from 01.06.2015 whereas Section 234E of the Act was introduced with effect from 01.07.2012. Further, Section 234E of the Act empowers the Authority to impose late fee of a sum of Rs.200/- for everyday delay in filing the e-TDS returns as mentioned therein.

4. The further contention of the petitioner is that if the Department had independently intend to impose late fee under Section 234E of the Act, they can do it in the normal course of assessment of income tax. However, in the present case, when the petitioner processed the statement of TDS under Section 200A of the Act, the respondent imposed late fee

under Section 234E of the Act. Though the Authority was empowered to impose the late fee under Section 234E of the Act, they are not empowered to impose the late fee till the commencement of the Financial Bill, 2015 when the TDS is processed under Section 200A of the Act. Therefore, he would contend that in the present case, without considering all those aspects, the Department had imposed the late fee under Section 234E of the Act when the petitioner had processed the statement of TDS under Section 200A of the Act.

5. Further, he would submit that the petitioner had filed the reply dated 16.04.2019 for all the intimations sent under Section 200A of the Act by the respondents and the said reply was considered as a waiver application and the impugned order was passed by the respondent rejecting the request of the petitioner to remove the late fee, which was imposed under Section 234E of the Act while processing the TDS under Section 200A of the Act, for the assessment years 2012-2013 to 2014-2015, without considering the submissions of the petitioner. Hence, the present writ petitions.

6. On the other hand, the learned counsel for the respondents would submit that the late fee was imposed when they had processed the statement of TDS under Section 200A of the Act, which empowers the Authority to impose the late fee with effect from 01.06.2015. He would further contend that since Section 234E of the Act was introduced with effect from 01.07.2012, during early days also they were empowered to impose late fee. Therefore, since there was no provision for imposing the late fee at the time of processing the statement of TDS under Section 200A of the Act, the Finance Bill was introduced in the year 2015 and he had also referred to the objects and reasons for introduction of Section 200A(1)(c) of the Act.

7. On perusal of the said objects and reasons, it appears that since there is no mechanism to impose the late fee while processing TDS under Section 200A of the Act, the said sub-Section 200A(1)(c) of the Act was brought in with effect from 01.06.2015. Therefore, he would contend that the Authority had taken all these aspects into consideration and passed

the impugned order that they are not having any power for waiver of the late fee.

8. The learned counsel appearing for the respondent would also submit that Section 234E of the Act was introduced as early as with effect from 01.07.2012 and whatever the amendment brought in the Finance Bill, 2015, the same will take retrospective effect. Further, he would contend that the Authorities are entitled to impose late fee under Section 234E of the Act even if the provision under Section 200A(1)(c) of the Act is not available and he referred to some citations with regard to the upholding provisions of Section 234E of the Act, which are as follows:

> *(i)* ***Qatalys Software Technologies Private Limited vs. Union of India*** *reported in* ***[2020] 115 taxxmann.com 345 (Madras);***
>
> *(ii)* ***Biswajit Das vs. Union of India*** *reported in* ***[2019] 103 taxmann.com 290 (Delhi);***
>
> *(iii)* ***Dr.Amrit Lal Mangal vs. Union of India*** *reported in* ***[2015] 62 taxmann.com 310 (Punjab);***

(iv) ***Rajesh Kourani vs. Union of India*** *reported in* ***[2017] 83 taxmann.com 137 (Gujarat);***

9. Heard the learned counsel for the petitioner and the respondents and also perused the materials available on record.

10. There is no dispute on the aspect of validity of the Section 234E of the Act. The only issue that has to be decided in the present case is as to whether the late fee can be imposed under Section 234E of the Act, while processing the statement of TDS under Section 200A of the Act for the subject assessment years?

11. On considering the submissions of both the learned counsel and while reading Section 234E of the Act, it appears that the Department/respondents can impose the late fee for the circumstances mentioned under Section 234E of the Act with effect from 01.07.2012, but not when they process the TDS under Section 200A of the Act. In the Finance Bill, 2015, Section 200A(1)(c) of the Act was introduced, which reads as follows:

"200A. Processing of statements of tax deducted at source.—

(1) ....

(a).....................

(b)........................

(c) the fee, if any, shall be computed in accordance with the provisions of section 234E;"

12. Further, the objects and reasons for introduction of Section 200A(1)(c) of the Act are as follows:

*"**Rationalisation of provisions relating to Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)***

Under Chapter XVII-B of the Act, a person is required to deduct tax on certain specified payment at the specified rate if the payment exceeds the specified threshold. The person deducting tax ('the deductor') is required to file a quarterly Tax Deduction at Source (TDS) statement containing the details of deduction of tax made during the quarter by the prescribed due date. Similarly, under Chapter XVII-BB of the Act, a person is required to collect tax on certain specified receipts at the specified rates. The person collecting tax ('the collector') also is required to file a quarterly Tax Collection at Source (TCS) statement containing the *details of collection of tax made during the quarter by the prescribed due date. In order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under section 234E of the Act has proved to be an effective tool in improving the compliance in respect of timely submission of TDS/TCS statement by the deductor or collector.*

Finance (No.2) Act, 2009 inserted section 200A in the Act which provides for processing of TDS statements for determining the amount payable or refundable to the deductor. However, as section 243E was inserted after the insertion of section 200A in the Act, the existing provisions of section 200A of the Act does not provide for determination of fee payable under section 234E of the Act at the time of processing of TDS statements. It is, therefore, proposed to amend the provisions of section 200A of the Act so as to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Currently, the provisions of sub-section (3) of *section 200 of the Act enable the deductor to furnish TDS correction statement and consequently, section 200A of the Act allows processing of the TDS correction statement. However, currently, there does not exist any provision for allowing a collector to file correction statement in respect of TCS statement which has been furnished. It is, therefore, proposed to amend the provisions of section 206C of the Act so as to allow the collector to furnish TCS correction statement.*

Currently, there does not exist any provision in the Act to enable processing of the TCS statement filed by the collector as available for processing of TDS statement. As the mechanism of TCS statement is similar to TDS statement, it is proposed to insert a provision in the Act for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A of the Act. The proposed provision shall also incorporate the mechanism for computation of fee payable under section 234E of the Act."

13. A reading of the above makes it clear that since no mechanism was available for determination of late fee payable under Section 234E of

the Act at the time of processing TDS statements. Thus it was proposed to amend the provisions of Section 200A of the Act, so as to enable the computation of fee payable under Section 234E of the Act at the time of processing of TDS statement under Section 200A of he Act. Thus, the said sub-Section 200A(1)(c) of the Act was came to be inserted with effect from 01.06.2015.

14. Now the dispute is with regard to the assessment years 2012-13, 2013-14, 2014-15 and the applicability of Section 200A(1)(c) of the Act for relevant assessment years. There is no dispute on the aspect that the TDS statement was filed under Section 200A of the Act and the respondent had also issued the intimation under Section 200A of the Act, which means the respondents have processed the returns under Section 200A of the Act. When the respondent had started to process the returns of the petitioner under Section 200A of the Act, obviously they have to follow the requirements under Section 200A of the Act. Section 200A(1)(c) of the Act was introduced with effect from 01.06.2015. A reading of the objects and reasons of the same makes it clear that since

no mechanism was available, Section 200A(1)(c) of the Act was introduced for imposing late fee for the delay in filing statement of TDS. Therefore, from the introduction of the said Sub-Section it is clear that prior to the same, though Section 234E of the Act was introduced with effect from 01.07.2012, the Authorities were not empowered to impose the late fee while processing the statement of TDS under Section 200A of the Act.

15. The learned counsel for the respondent advanced his arguments on the aspect of the imposition of late fee by applying Section 200A(1)(c) of the Act retrospectively. This Court is not in agreement with the said submissions of the respondent. Since, there was no provision for imposing the late fee under Section 234E of the Act while filing and processing the TDS returns under Section 200A of the Act, clause (c) to Sub-Section (1) to Section 200A was introduced with effect from 01.07.2012. Therefore, the aforesaid submission made by the learned counsel for the respondent is rejected by this Court.

16. Further it was stated by the respondent that they have no power to waive the late fee and only the Commissioner of Income Tax is empowered to pass the revised order by proper application of provision of Section 264C of the Act.

17. In view of the above, it is made clear that the respondent had had imposed the late fee only under Section 234E of the Act for the assessment years 2012-2013, 2013-2014, 2015-2015. However, Section 200A(1)(c) of the Act was not introduced during the said assessment years. In the absence of any provisions under Section 200A of the Act, when they have processed the application for TDS under Section 200A, no late fee can be imposed under Section 234E. Hence, in such view of the matter, this Court feels that the impugned orders are liable to be set aside

18. Accordingly, the impugned orders dated 24.09.2021 are set aside and the Department is directed to consider the reply of the petitioner dated 16.04.2019 as a revision application, which was earlier

considered as a waiver application, and pass appropriate orders by taking into consideration of the order passed by this Court within a period of eight weeks from the date of receipt of copy of this order.

19. With the above directions, these writ petitions are disposed of. Consequently, the connected miscellaneous petitions are also closed.

09.10.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,

nsa

W.P.Nos.2700 and 2703 of 2022
and W.M.P.Nos.2874 & 2877 of 2022

09.10.2023

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