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W.P. No.16934 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2023

PRONOUNCED ON : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.16934 of 2021 and
W.M.P.Nos.17943 and 17945 of 2021

Conceria International Private Limited
Represented by its Managing Director
Dashinamoorthy Prakash
Having registered office at No.67/2 Othavadi Street,
East Lane, Navalpur,
Ranipet District 63202. ... Petitioner

Vs.

1. The Income Tax Officer
Income Tax Department,
TDS Ward Vellore, TDS Range Chennai,
Vellore, Tamil Nadu.
2. The Assistant Commissioner of Income Tax
Centralised Processing Cell – TDS
Aaykar Bhawan, Sector 3, Vaishali,
Ghaziabad,
Uttarpradesh 201010. ... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent relating to the impugned Communication vide Ref. No.19012021/00699/CD dated 19.01.2021 and the consequent impugned Office Letter vide 234E Waiver rejection/ITO/TDS/VLR/CHE/WT/152' dated 26.02.2021 issued by the 1st Respondent and quash the same as illegal, arbitrary and unconstitutional in so far as the demand of the late fees U/s 234E of the Income Tax Act, 1961.

For Petitioner : Mr.Salai Varun

For Respondents : Mr.B.Ramaswamy
Senior Standing Counsel

ORDER

The short question that arises for consideration in this writ petition relates to whether late fee under Section 234E of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) can be levied prior to the amendment to the Section 200A(1)(c) of the Act *vide* Finance Act, 2015 w.e.f. 01.06.2015 whereby the fee to be computed in accordance with the provision of Section 234E of the Act stood included while processing the statements of tax deducted at source.



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2. Brief Facts:

2.1. The petitioner company is a manufacturer of leather and leather products based in Ranipet District Tamil Nadu. The petitioner also engaged sub contractors and in respect of payments made to sub contractors the petitioner was required to deduct taxes at source in terms of the Act.

2.2. An intimation under Section 200A of the Act was issued by the respondent/revenue dated 11.12.2013 for the financial years 2012-13, 2013-14, 2014-15 and 2015-16 intimating the sum due and payable in terms of Section 200A of the Act. Thereafter on 19.01.2021 yet another intimation with regard to the outstanding demand of TDS of Rs.6,54,350/- was issued for the period 2010-11 to 2015-16.

2.3. The petitioner submitted its response vide letter dated 29.01.2021 wherein it was stated that the Income Tax Department was not empowered to levy late fee under Section 234E of the Act prior to 01.06.2015, while also stating that interest could be waived and hence requested waiver of late fee and interest. The impugned order



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considering the above letter dated 29.01.2021 was passed stating that there is no power of waiver with regard to late fee under Section 234E of the Act and thus the request for waiver stood rejected while also drawing the attention of the petitioner to the judgment of the Madras High Court in the case of *Qatalys Software Technologies Pvt. Limited* reported in *115 taxmann.com 345* wherein the validity of the late fee levied under Section 234E of the Act was upheld and also to the judgment of the Gujarat High Court in the case of *Rajesh Kourani v. Union of India and Ors.*, reported in *(2017) 297 CTR 502* wherein the late fee under Section 234E of the Act was held to be operative with effect from 01.07.2012.

3.The challenge in the present writ petition is limited to the levy of late fee under Section 234E of the Act on the basis that though Section 234E of the Act was introduced vide Finance Act, 2012 with effect from 01.07.2012 it becomes operational/effective only with effect from 01.06.2015 when sub-clause (c) to sub-section (1) to Section 200A of the Act was amended/substituted by Finance Act, 2015 w.e.f. 01.06.2015 whereby the fee to be computed in accordance with the provision of Section 234E of the Act stood included while processing the statements



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of tax deducted at source.

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4. This Court finds that the above issue had engaged the attention of various High Courts insofar as the vires of Section 234E of the Act including the Madras High Court, Gujarat High Court, Karnataka High Court, Kerala High Court, Bombay High Court amongst others. There is uniformity in the view that the provisions of Section 234E of the Act insofar as it imposes fee for delayed filing of statement of tax deducted at source is constitutionally valid. However, divergent views have been expressed on the question as to whether late fee under Section 234E of the Act can be imposed even prior to 01.06.2015 whereby Section 200A(1)1(c) of the Act was amended and the fee to be computed in accordance with the provisions of Section 234E of the Act stood included while processing the statements of tax deducted at source.

5. Reliance was sought to be placed upon the judgment of Karnataka High Court in the case of *Fatheraj Singhvi & Ors. Vs. Union of India & Ors*, reported in 142 DTR 0281(Kar) wherein it was held that the amendment to Section 200A of the Act brought about with effect from 01.06.2015 whereby sub clause (c) to sub-section (1) to Section



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200A of the Act was introduced is not merely a regulatory mechanism but is substantive in nature thus the amendment to Section 200A(1)(c) of the Act cannot be given retrospective effect. Consequently it was held that the demand under Section 200A of the Act for computation and intimation for the payment of fee under Section 234E of the Act cannot be made in purported exercise of power under Section 200A of the Act for the period prior to 01.06.2015 and that the levy of fee under Section 234E of the Act prior to 01.06.2015 was held to be without authority of law. In this regard it may be relevant to refer to the judgment of the Karnataka High Court in the case of *Fatheraj Singhvi and others Vs. Union of India and others* wherein it was held as under :

“22. It is hardly required to be stated that, as per the well established principles of interpretation of statute, unless it is expressly provided or impliedly demonstrated, any provision of statute is to be read as having prospective effect and not retrospective effect. Under the circumstances, we find that substitution made by clause (c) to (1) of sub-section (1) of Section 200A can be read as having prospective effect and not having retroactive character or effect. Resultantly, the demand under Section 200A for computation and intimation for the payment of fee under Section 234E could not be made in purported exercise of power under Section 200A by the respondent for the period of the respective assessment year prior to 1.6.2015. However, we make it clear that, if any deductor has already paid the fee after intimation received under Section 200A, the aforesaid view will not permit the



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deductor to reopen the said question unless he has made payment under protest.

24. If the facts of the present cases are examined in light of the aforesaid observation and discussion, it appears that in all matters, the intimation given in purported exercise of power under Section 200A are in respect of fees under Section 234E for the period prior to 1.6.2015. As such, it is on account of the intimation given making demand of the fees in purported exercise of power under Section 200A, the same has necessitated the appellant-original petitioner to challenge the validity of Section 234E of the Act. In view of the reasons recorded by, us hereinabove, when the amendment made under Section 200A of the Act which has come into effect on 1.6.2013 is held to be having prospective effect, no computation of fee for the demand or the intimation for the fee under Section 234E could be made for the TDS deducted for the respective assessment year prior to 1.6.2015. Hence, the demand notices under Section 200A by the respondent- authority for intimation for payment of fee under Section 234E can be said as without any authority of law and the same are quashed and set aside to that extent."

6. I shall now refer to the judgment of the Gujarat High Court and the Rajasthan High Court in the case of *Rajesh Kourani v. Union of India* reported in (2017) 297 CTR 502 and *Dundlod Shikshan Sanasthan v Union of India* reported in 284 CTR 175 (RAJ) wherein it was held that Section 234E of the Act is the charging Section providing for levy of fees 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 of the Act. Section 200A is merely a machinery provision. Even in the absence of Section 200A of the Act the levy of fee under Section 234E of the Act was permissible.



In *Rajesh Kourani v. Union of India* reported in (2017) 297 CTR 502

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19. In plain terms, s. 200A of the Act is a machinery provision providing mechanism for processing a statement of deduction of tax at source and for making adjustments, which are, as noted earlier, arithmetical or prima facie in nature. With effect from 1st June, 2015, this provision specifically provides for computing the fee payable under s. 234E of the Act. On the other hand, s. 234E is a charging provision creating a charge for levying fee for certain defaults in filing the statements. Under no circumstances a machinery provision can override or overrule a charging provision. We are unable to see that s. 200A of the Act creates any charge in any manner. It only provides a mechanism for processing a statement for tax deduction and the method in which the same would be done. When s. 234E has already created a charge for levying fee that would thereafter not been necessary to have yet another provision creating the same charge. Viewing s. 200A as creating a new charge would bring about a dichotomy. In plain terms, the provision in our understanding is a machinery provision and at best provides for a mechanism for processing and computing besides other, fee payable under s. 234E for late filing of the statements.”

20. Even in absence of s. 200A of the Act with introduction of s. 234E, it was always open for the Revenue to demand and collect the fee for late filing of the statements. Sec. 200A would merely regulate the manner in which the computation of such fee would be made and demand raised. In other words, we cannot subscribe to the view that without a regulatory provision being found for s. 200A for computation of fee, the fee prescribed under s. 234E cannot be levied. Any such view would amount to a charging section yielding to the machinery provision. If at all, the recasted cl. (c) of sub-s. (1) of s. 200A would be in nature of clarificatory amendment. Even in absence of such provision, as noted. It was always open for the Revenue to charge the fee in terms of s. 234E of the Act. By amendment, this adjustment was brought within the fold of s. 200A of the Act. This would have one direct effect. An order passed under s. 200A of the Act is rectifiable under s. 154 of the Act and is also appealable under s. 246A. In absence of the power of authority to make such adjustment under s. 200A of the Act, any calculation of the fee would not partake the character of the intimation under said provision and it could be argued that such an order would not be open to any rectification or appeal. Upon introduction of the recasted cl. (c), this situation also would be obviated. Even prior to 1st June, 2015, it was always open for the Revenue to calculate fee in terms of s. 234E of the Act. The Karnataka High Court in case of *Fatheraj*



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Singhvi (supra) held that s. 200A was not merely a regulatory provision, but was conferring substantive power on the authority. The Court was also of the opinion that s. 234E of the Act was in the nature of privilege to the defaulter if he fails to pay fees then he would be rid of rigor of the penal provision of s. 271H of the Act. With both these propositions, with respect, we are unable to concur. Sec. 200A is not a source of substantive power. Substantive power to levy fee can be traced to s. 234E of the Act. Further, the fee under s. 234E of the Act is not in lieu of the penalty of s. 271H of the Act. Both are independent levies. Sec. 271H only provides that such penalty would not be levied if certain conditions are fulfilled. One of the conditions is that the tax with fee and interest is paid. The additional condition being that the statement is filed latest within one year from the due date. Counsel for the petitioner however, referred to the decision of Supreme Court in case of CIT v. B.C. Srinivasa Setty, (1981) 21 CTR (SC) 138, to contend that when a machinery provision is not provided, the levy itself would fail. The decision of Supreme Court in case of B.C. Srinivasa Setty (supra) was rendered in entirely different background. Issue involved was of charging capital gain on transfer of a capital asset. In case on hand, the asset was in the nature of goodwill. The Supreme Court referring to various provisions concerning charging and computing capital gain observed that none of these provisions suggest that they include an asset in the acquisition of which no cost can be conceived. In such a case, the asset is sold and the consideration is brought to tax, what is charged is a capital value of the asset and not any profit or gain. This decision therefore would not apply in the present case.”

In Dundlod Shikshan Sanasthan v Union of India reported in 284

CTR 175 (RAJ)

“8. In the present case, the fee was levied under Section 200 for late filing of the returns, prior to the amendments made by the Finance Act, 2015 with effect from 1.6.2015 in Sections 200A, 246A and 272A providing for computation and appeal. We do not find that even prior to these amendments the imposition of fee was illegal. We do not in exercise of the power under Article 226 of the Constitution of India find any valid reasons or justification to interfere with the compensatory fees imposed for late filing of the TDS returns on flat rates.”



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7. Before proceeding further it may be relevant to refer to Section 234E of the Act 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-s. (3) of s. 200 or the proviso to sub-s. (3) of s. 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-s. (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-s. (1) shall be paid before delivering or causing to be delivered a statement in accordance with sub-s. (3) of s. 200 or the proviso to sub-s. (3) of s. 206C.

(4) The provisions of this section shall apply to a statement referred to in sub-s. (3) of s. 200 or the proviso to sub-s. (3) of s. 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.”

7.1. A reading of the above provision would show that liability to pay, by way of fee gets attracted under sub-section(1) to Section 234E of the Act once 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 of the Act and the liability shall continue for every day during which the failure continues. Sub-section



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(3) to Section 234E of the Act provides that the fee referred to in sub-section (1) to Section 234E of the Act 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. In other words, sub-section (3) provides for self assessment / payment of fee payable under sub-section(1) to Section 234E of the Act. Importantly, sub-section (4) to Section 234E of the Act provides that the above provisions would apply to statement referred to in sub-section (3) to Section 200 of the Act which is to delivered or cause to delivered on or after 01.07.2012.

7.2. With the above overview of Section 234 E of the Act and on considering both the above views, it appears to me that the opinion expressed by the Gujarat High Court that Section 234E of the Act by itself creates a liability and the liability to pay the late fee is not dependent on Section 200A(1)(c) of the Act which only prescribes the recovery mechanism reflects the true intent and purpose of Section 234E of the Act. Section 234E of the Act which provides for late fee is the substantive provision and the levy is not dependent on Section



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200A(1)(c) of the Act which only prescribes a recovery mechanism. A reading of Section 234E of the Act would make it clear that it gets attracted, the moment there is a failure on the part of a person 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 of the Act. The person committing the above breach / infraction renders himself liable to pay by way of fee a sum of Rs.200 everyday during which the failure continues. Sub-section (3) in fact provides for a self assessment / payment of the fee while delivering or causing to deliver a statement in accordance with sub-section(3) of Section 200 or the proviso to sub-section(3) of Section 206C of the Act. Sub Section(4) to Section 234E of the Act also makes it clear that the above provision would be effective from 01.07.2012. Therefore the submission that 234E of the Act would not be operable / effective unless and until Section 200A(1)(c) was introduced overlooks the fact that Section 234E (1) of the Act is the substantive provision and Section 234E(3) of the Act provides for a self declaration / payment for the delay in complying with sub-section(3) of Section 200 or the proviso to sub -section(3) of Section 206C of the Act. With due respect I am unable to subscribe to the view



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expressed by the Karnataka High Court in view of the reasons stated supra.

7.3. In the light of the above discussion challenge to the order dated 26.02.2021 imposing the levy of late fee prior to 01.06.2015 stands rejected. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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To:

1. The Income Tax Officer
Income Tax Department,
TDS Ward Vellore, TDS Range Chennai,
Vellore, Tamil Nadu.
2. The Assistant Commissioner of Income Tax
Centralised Processing Cell – TDS
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