IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2024

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No. 8992 of 2024
And
W.M.P.Nos. 10018 & 10019 of 2024

Reethvik International
Represented by partner
S.Kavitha
D.No.: 65, Padmavathipuram
Avinashi, Gandhi Nagar Post,
Tirupur – 641 603 ... Petitioner

..Vs..

1. The Principal Chief Commissioner of Income Tax
Administrative Block,
63, Race Course Road,
Coimbatore,
Tamil Nadu – 641 018.

2. The Chief Commissioner of Income Tax (TDS)
Administrative Block,
63, Race Course Road,
Coimbatore,
Tamil Nadu – 641 018.

3. The Deputy Commissioner of Income Tax
Centralized Processing Cell – TDS
Aayakar Bhawan, Sector -3
Vaishali, Ghaziabad, U.P.-201010.

4. The Income Tax Officer, TDS Ward
No.121, Adams Building, Sixty Feet Road
Tiruppur. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records on the files of the third respondent in impugned Demand Intimation Letter Nos. TDS/1213/26Q/D/100034583043, TDS/1213/26Q/D/100034583049, TDS/1213/26Q/D/100034583056, TDS/1314/26Q/D/100034588242, TDS/1415/26Q/D/100034583141, TDS/1415/26Q/D/100034583143, dated 28.07.2019 respectively, TDS/1314/26Q/D/100034588240, dated 29.07.2019, TDS/1415/26Q/D/100034693562, dated 02.08.2019 and quash the same as being illegal, void, arbitrary, unconstitutional, without jurisdiction, without authority of law and contrary to the principles of natural justice.

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For Petitioner :: Mr. B.Raveendran
for Mr. K.Thyagarajan

For Respondents :: Dr.B.Ramaswamy
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the impugned Demand Intimation Letters, passed by the third respondent and to quash the same.

2. The learned counsel appearing on either side would submit that the Judgment of this Court reported in ***2023 (10) TMI 1141 [M/s. True Blue Voice India Private Ltd., and another Vs. the Chief Commissioner of Income Tax – TDS, Chennai and others]*** would squarely apply to the facts of the present case.

3. The relevant portion of the said Judgment is extracted below:-

> *"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?*
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> *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 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.*
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> *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."*

4. In the present case, the respondent had imposed the late fee only under Section 234E of the Act for the assessment years 2012-2013, 2013-2014, 2014-2015. However, Section 200A of the Act 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 of the Act, 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.

5. Accordingly, the impugned demand Intimation Letters are set aside and the Writ Petition stands disposed of. No costs.

12.09.2024

vsg (5/8)

Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

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KRISHNAN RAMASAMY, J.,

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