

Lex Saturates

Sree Narayana Guru Smaraka Sangam Upper Primary School

v.

Union of India

Constitutional validity of Sec. 234E of Income Tax Act

Report by:

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Lex Saturates

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PARTIES INVOLVED

W.P. (C) NO. 30229 OF 2013

Sree Narayana Guru Smaraka Sangam Upper Primary School ... Appellants

Versus

Union of India ... Respondents

DATE OF JUDGEMENT : 14-12-2016

PRESENT:

JUSTICE A.M.SHAFIQU

Facts of the Case

Petitioner is a Lower Primary School and they were giving salary payments to the teaching and non-teaching staff of the school after Deducting Tax at Source (TDS) and the amount so collected is credited to the Income Tax Department. The petitioner has also been allotted with a number known as Tax Deduction and Collection Account Number (TAN). In terms of Section 200(3) of the Act, quarterly statement of TDS must be filed in Form 24Q in respect of the salary for the corresponding quarter ending June/ September/ December/ March of every year. Petitioner submits that in respect of the quarter ending September 2012 and December 2012, TDS was collected and remitted in time. However, the statement in Form 24Q in respect of the 2nd and 3rd quarter was not filed in time. The due date for filing statement for the 2nd quarter was 15th October and the 3rd quarter was 15th January. The statement is to be filed online through the National Securities Depository Ltd. (NSDL). Even if the statements are made ready for uploading, it can be done only at the TIN Facilitation Centres (TFC) set up by NSDL and cannot be done by an individual or entity. The fee for e-filing of the statement and fee for other services rendered are paid by the deductors. Petitioner submits that on account of various factors beyond the control of the deductor, there was delay in uploading the details of statement within the stipulated time.

By Finance Act, 2012, Section 234E has been introduced to the Act with effect from 01.07.2012 by which a fine is being imposed for failure to deliver or caused to be delivered a statement within the time prescribed in Section 200(3). The fine is Rs. 200/ each for each day's delay and the fee has to be paid before filing such statement. The Income Tax department has given to the petitioner a computer-generated intimation under Section 200A of the Act demanding late fee under Section 234E for the 2nd and 3rd quarters amounting to Rs. 15,000/ and Rs. 12,400/ respectively for the delay in filing TDS statement.

Issues Involved:

WHETHER Section 234E of the Income Tax Act 1961 which was inserted by Finance Act, 2012 is constitutionally valid?

Legal provisions involved

- Income Tax Act 1961
- Article 226 in The Constitution Of India 1949

Legal Pronouncements

- *Rashmikant Kundalia vs Union Of India*; [2015] 373 ITR 268
- *Kewal Krishan Puri & Anr vs State Of Punjab*; 1980 AIR 1008
- *Government of Andhra Pradesh and Ors vs P. Laxmi Devi*; [2008 (4) SCC 720]

Arguments

PETITIONERS:

When the intention of the legislature is to ensure that the TDS statements are filed in time and is not delayed, levy of such a fee and that too at `200/- per day without even considering the reasons for the delay is unfair, unreasonable and arbitrary. In order to levy fee, the department should take some steps by which they incur an expenditure and without any such expenditure, no such fee can be levied especially when a penalty procedure has been contemplated under the statute.

According to the petitioner, in terms of Section 273B, if the assessee is able to prove that there is reasonable and sufficient cause for the default, penalty shall not be imposed. However, by incorporating Section 234E, late fee has become mandatory and unless the late fee is paid along with the TDS statement, the deductor will not be in a position for filing TDS statement. Petitioner submits that at times there will be genuine difficulty in uploading the TDS statement within the time and therefore imposing fee for delayed filing without being heard clearly amounts to arbitrariness.

Petitioner also contends that the levy of fee under Section 234E does not stand the test of Quid Pro Quo, it is discriminatory, unreasonable and therefore violative of Articles 14 & 19 (1)(g) of the Constitution of India.

Even if there is delay in depositing the amount, interest is charged as provided under Section 201(1A) of the Act. Penalty proceedings are also prescribed under Section 221 of the Act for committing default in remitting the TDS or if there is delay in remitting without good and sufficient reasons. Therefore, when substantial provisions have already been incorporated to ensure payment of TDS in time, investing powers on the income tax authorities to levy fee for the delay in filing the statement without an opportunity to be heard is illegal.

Respondents:

In order to provide effective deterrence against delay in furnishing of TDS/TCS statement, the Finance Act, 2012 inserted section 234E in the Income-tax Act to provide for levy of fee for late furnishing of TDS/TCS statement. The levy of fee under section 234E of the Income-tax 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. There is no ambiguity in the provisions of the statute.

There is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt.¹ This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.²

Section 234E per se indicates that the section is regarding collection of a fee. This was not a penal provision but a fee for not furnishing the TDS return/statements within the prescribed time frame as the late submission of TDS statements creates additional work for the Income Tax Department. Looking at it from this perspective, it cannot be said that section 234E of the Act is either ultra vires the Constitution or in any way violates Article 14 thereof.

¹ *Government of Andhra Pradesh and Others v. P. Laxmi Devi*; [2008 (4) SCC 720]

² *Ibid*

Judgement

To challenge the constitutional validity of section 234E, the main thrust of the argument of the Petitioners was that what was sought to be levied under the said section was a "fee" which necessarily could be levied only for a service that was rendered, failing which the levy of such a fee was unconstitutional.³ As per the amendment made to the Finance Act 2015, with effect from 01.06.2015, a provision for appeal has been inserted Section 246A against an order under sub-section (1) of Section 200A. Since the appellate remedy has already been provided, the petitioner cannot contend that the impugned provision of the Act is unreasonable and arbitrary.

The court held that Section 234E is not ultra vires of the Constitution of India and is not invalid. Writ petitions are dismissed reserving the right of the petitioners to take appropriate action in accordance with law.

³ *Rashmikant Kundalia and anr v. Union of India and Ors*; [2015] 373 ITR 268