



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF AUGUST 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MR.JUSTICE B.SREENIVASE GOWDA

WRIT APPEAL NOS.2663-2674/2015(T-IT)

C/w

WA NOS.2648-2649/2015 & WA NOS.432-434/2016(T-IT)

&

WA NOS.2650-2651/2015 & WA NOS.537-539/2016(T-IT)

&

WRIT APPEAL NOS.2652-2653/2015(T-IT)

&

WRIT APPEAL NO.34/2016(T-IT)

IN WA NOS.2663-2666/2015(T-IT):

BETWEEN:

1. SRI. FATHERAJ SINGHVI
AGED ABOUT 61 YEARS,
SON OF LATE SRI.P.R. SINGHVI
NO.416 & 232, 'SHANTHI'
#8,VISHRANTHI ENCLAVE
KANAKAPURA ROAD,
DODDAKALLASANDRA POST,
BANGALORE-560 062
(SENIOR CITIZENSHIP NOT CLAIMED)
2. SRI D DEVARAJ
AGED ABOUT 62 YEARS,
SON OF LATE SRI. DEVAPPA,
NO.202, PARIJAT, 45/1,
FAIRFIELD LAYOUT,
RACE COURSE ROAD,
BANGALORE-560 001

(SENIOR CITIZENSHIP NOT CLAIMED)

3. SRI UNNI RAJAGOPAL
AGED ABOUT 61 YEARS,
SON OF SRI K P RAJAGOPAL
NO.B-1503, GODREJ WOODSMAN ESTATE,
AMCO BATTERIES COMPOUND,
BELLARY ROAD,
BANGALORE-560 024.
(SENIOR CITIZENSHIP NOT CLAIMED)

4. SRI SEKHAR VASAN
AGED ABOUT 62 YEARS,
SON OF SRI S S VASAN,
NO.51, RANGA RAO ROAD,
BASAVANAGUDI
BANGALORE-560 004.

...APPELLANTS

(BY SRI.A SHANKAR, ADVOCATE FOR SRI.M.LAVA,
ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS SECRETARY,
MINISTRY OF FINANCE
SOUTH BLOCK NEW DELHI
NEW DELHI-110 001.
2. CENTRAL BOARD OF DIRECT TAXES
REP BY ITS CHAIRMAN,
DEPARTMENT OF REVENUE
4TH FLOOR JEEVAN DEEP BUILDING
PARLIAMENT STREET,
NEW DELHI-110 001.
3. THE COMMISSIONER OF INCOME TAX
BANGALORE-II
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BANGALORE-560 001

4. TDS RECONCILIATION ANALYSIS AND
CORRECTION ENABLING SYSTEM
TDS CPC, AAYKAR BHAWAN,
SECTOR-3, VAISHALI,
GHAZIABAD,
UTTAR PRADESH-201010.

...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN WA NO.2667/2015(T-IT):

BETWEEN:

M/S.SUN ZONE SOLAR SYSTEMS
REP BY ITS MANAGING PARTNER
SRI.PADMANABH.S.T
BANGALORE-560 056.

...APPELLANT

(BY SRI.A SHANKAR, ADVOCATE FOR SRI.M.LAVA,
ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS SECRETARY
MINISTRY OF FINANCE
SOUTH BLOCK NEW DELHI
NEW DELHI-110 001.
2. CENTRAL BOARD OF DIRECT TAXES
REP BY ITS CHAIRMAN
DEPARTMENT OF REVENUE
4TH FLOOR JEEVAN DEEP BUILDING
PARLIAMENT STREET
NEW DELHI-110 001.
3. THE COMMISSIONER OF INCOME TAX
BANGALORE-II
CENTRAL REVENUE BUILDING
QUEENS ROAD,
BANGALORE-560 001.
4. TDS RECONCILIATION ANALYSIS AND
CORRECTION ENABLING SYSTEM,
TDS CPC, AAYKAR BHAWAN,
SECTOR-3, VAISHALI,
GHAZIABAD,

UTTAR PRADESH-201010.

...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN WA NOS.2668-2674/2015(T-IT):

BETWEEN:

1. M/S.MAHRISHI MELTCHEMS
PRIVATE LIMITED
REP. BY ITS MANAGING DIRECTOR
SRI RAM BILAS BHUTARA
AGED ABOUT 57 YEARS
SON OF SRI.SUGAN CHAND BHUTARA
THE COMPANY IS SITUATED AT
NO.3, MAHRISHI MANSION,
3RD CROSS, MYSORE ROAD,
BANGALORE-560 026.
2. M/S. SUDHA MELTCHMES PRIVATE LIMITED
REP. BY ITS MANAGING DIRECTOR
SRI RAJARAM BHUTARA
AGED ABOUT 64 YEARS,
SON OF SRI SUGAN CHAND BHUTARA
THE COMPANY IS SITUATED AT
NO.3, MAHRISHI MANSION,
3RD CROSS, MYSORE ROAD,
BANGALORE-560 026.
3. M/S.MAHRISHI ALLOYS PRIVATE LIMITED
REP. BY ITS MANAGING DIRECTOR
SRI RAJARAM BHUTARA
AGED ABOUT 64 YEARS,
SON OF SRI SUGAN CHAND BHUTARA
THE COMPANY IS SITUATED AT
NO.3, MAHRISHI MANSION,
3RD CROSS, MYSORE ROAD,
BANGALORE-560 026.

...APPELLANTS

(BY SRI.A SHANKAR, ADVOCATE FOR SRI.M.LAVA,
ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS SECRETARY,
MINISTRY OF FINANCE,
SOUTH BLOCK NEW DELHI,
NEW DELHI-110 001.
2. CENTRAL BOARD OF DIRECT TAXES
REP BY ITS CHAIRMAN
DEPARTMENT OF REVENUE,
4TH FLOOR JEEVAN DEEP BUILDING,
PARLIAMENT STREET,
NEW DELHI-110 001.
3. THE COMMISSIONER OF INCOME TAX
BANGALORE-II,
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BANGALORE-560 001.
4. TDS RECONCILIATION ANALYSIS AND
CORRECTION ENABLING SYSTEM
TDS CPC, AAYKAR BHAWAN,
SECTOR-3, VAISHALI,
GHAZIABAD,
UTTAR PRADESH-201010. ...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 41614-617/2014, 41618/2014, 53286-289/2014 & 53290-291/2014 DATED 12/6/15 & WP 6350/15 DATED 20/8/15.

IN WA NOS.2648-2649/2015(T-IT)
& WA NOS.432-434/2016(T-IT)

BETWEEN:

1. M/S. CATHODIC CONTROL CO. LTD.,
PLOT NO.87, III PHASE
PEENYA INDUSTRIAL AREA
BANGALORE-560 058

REPRESENTED BY ITS
MANAGING DIRECTOR
SRI. V. BABU SATHIAN

2. SRI V BABU SATHIAN
S/O S.V. RAGHAVAN
AGED 64 YEARS
R/AT PLOT NO. 86
III PHASE, PEENYA INDUSTRIAL AREA,
BANGALORE-560 058
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

...APPELLANTS

(BY SRI.ARAVIND.V.CHAVAN, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF FINANCE
SOUTH BLOCK
NEW DELHI-110 001
REPRESENTED BY ITS SECRETARY
2. CENTRAL BOARD OF DIRECT TAXES
DEPARTMENT OF REVENUE
4TH FLOOR, JEEVAN DEEP BUILDING,
PARLIAMENT STREET
NEW DELHI-110 001
REPRESENTED BY ITS CHAIRMAN
3. THE CHIEF COMMISSIONER OF INCOME TAX-I
C.R.BUILDINGS
QUEENS ROAD
BANGALORE-560 001
4. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRALIZED PROCESSING CELL-TDS,
C.R.BUILDINGS
QUEENS ROAD
BANGALORE-560 001

...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN
THE WRIT PETITION 14294-95/2014 DATED 12/06/2015.

IN WA NOS.2650-2651/2015(T-IT):
& WA 537-539/2016(T-IT)

BETWEEN:

1. M/S. PROCESS PUMPS (I) PVT LTD
PLOT NO.86, III PHASE
PEENYA INDUSTRIAL AREA
BENGALURU-560 058
REPRESENTED BY ITS MANAGING DIRECTOR
SRI V BABU SATHIAN
2. SRI V BABU SATHIAN
S/O S.V.RAGHAVAN
AGED 64 YEARS
R/AT PLOT NO.86, III PHASE
PEENYA INDUSTRIAL AREA
BENGALURU-560 058
(SENIOR CITIZEN BENEFIT NOT CLAIMED)

...APPELLANTS

(BY SRI.ARAVIND.V.CHAVAN, ADVOCATE)

AND:

1. UNION OF INDIA
MINISTRY OF FINANCE
SOUTH BLOCK
NEW DELHI-110 001
REPRESENTED BY ITS SECRETARY
2. CENTRAL BOARD OF DIRECT TAXES
DEPARTMENT OF REVENUE
4TH FLOOR, JEEVAN DEEP BUILDING
PARLIAMENT STREET
NEW DELHI-110 001
REPRESENTED BY ITS CHAIRMAN
3. THE CHIEF COMMISSIONER OF INCOME TAX-I
C R BUILDINGS
QUEENS ROAD
BENGALURU-560 001
4. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRALIZED PROCESSING CELL-TDS

C R BUILDINGS
QUEENS ROAD
BENGALURU-560 001

...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 14296-97/2014 DATED 12/06/2015.

IN WA NOS.2652-2653/2015(T-IT)
BETWEEN:

SYNDICATE BANK
TAX CELL, HEAD OFFICE
MANIPAL -576104
REPRESENTED HEREIN BY ITS
ASSISTANT GENERAL MANAGER
MR. R.RAMALINGAM

...APPELLANT

(BY SRI.K.P.KUMAR, SR.COUNSEL FOR
SRI.T.SURYANARAYANA, ADVOCATE FOR SRI.SANDEEP
HUILGOL, ADV.)

AND:

1. THE DEPUTY COMMISSIONER OF INCOME TAX
CENTRALIZED PROCESSING CELL-TDS
AAYKAR BHAVAN, SECTOR-3, VAISHALI,
GHAZIABAD, U P -201010
2. THE COMMISSIONER
OF INCOME TAX (SYSTEMS CPC-TDS)
CENTRALIZED PROCESSING CELL-TDS,
AAYKAR BHAVAN, SECTOR-3, VAISHALI,
GHAZIABAD, U P -201010
3. THE COMMISSIONER OF INCOME TAX (TDS)
ROOM NO.59, H M T BHAVAN, 4TH FLOOR,
BELLARY ROAD, GANGANAGAR
BENGALURU -560032
4. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

ROOM NO.128-A, NORTH BLOCK,
NEW DELHI-110001.

...RESPONDENTS

5.

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE WRIT APPEALS ARE FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION Nos.19398-19399/2014 DATED 12/06/2015.

IN WA NO.34/2016(T-IT):

BETWEEN:

M/S. JAS TELECOM PRIVATE LIMITED
REP BY ITS MANAGING DIRECTOR,
SRI N.RAVI SHANKAR,
AGED ABOUT 55 YEARS,
SON OF SRI. KOTI LINGAM NAYUDU,
THE COMPANY IS SITUATED AT NO.26,
IIND FLOOR, VEERASANDRA INDUSTRIAL AREA,
ELECTRONIC CITY POST,
BANGALORE-560 100.

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE FOR SRI.M.LAVA,
ADVOCATE)

AND:

1. UNION OF INDIA
REP BY ITS SECRETARY,
MINISTRY OF FINANCE,
SOUTH BLOCK NEW DELHI,
NEW DELHI-110 001
2. CENTRAL BOARD OF DIRECT TAXES
REP BY ITS CHAIRMAN,
DEPARTMENT OF REVENUE,
4TH FLOOR JEEVAN DEEP BUILDING,
PARLIAMENT STREET,
NEW DELHI-110 001
3. THE COMMISSIONER OF INCOME TAX
BANGALORE-II,
CENTRAL REVENUE BUILDING,
QUEENS ROAD,
BANGALORE-560 001

4. TDS RECONCILIATION ANALYSIS AND
CORRECTION ENABLING SYSTEM
REP. BY DCIT
TDS CPC, AAYKAR BHAWAN,
SECTOR-3, VAISHALI, GHAZIABAD,
UTTAR PRADESH-201010

...RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION 6350/2015 DATED 20/08/2015.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

JUDGMENT

As in all appeals, common Judgment and the order of the learned Single Judge is under challenge, they are being considered simultaneously.

2. All appeals are directed against the Judgment and the order passed by the learned Single Judge of this Court in the respective main writ petitions whereby the learned Single Judge for the reasons recorded in the order has held Sec.234E of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') as not suffering from any vice for being declared as *ultra vires* to the Constitution and ultimately has dismissed all the petitions.

3. The short facts of the case appear to be that, as per the petitioners, for the financial year of 2012-13 and 2013-14 (hereinafter referred to as 'the respective financial year') tax deductible at source (hereinafter referred to as 'TDS') was deducted by the respective petitioners and they were also deposited. However, as per the respondent, there was delay in filing of the return/statements with the details of the persons from whom the TDS was deducted including the details of the persons concerned and the transaction etc. Hence, the respondent-Department issued demand notices under Section 200A of the Act calling upon the respective petitioners to pay late filing fee under Section 234E of the Act in purported exercise of the power under Section 200A of the Act. More or less, under similar circumstances, all the petitioners approached this Court by challenging the constitutional validity of Section 234E of the Act contending *inter alia* that there is no service being rendered to the petitioners/deductors by the respondent-Department and therefore, consequently, the principles of *quid pro quo* is not available nor the charging of fee by the respondent-

Department is having any nexus to any service to be rendered to the deductor.

4. As per the petitioners, no service whatsoever is being rendered to the deductor by the Income Tax Department and therefore, the fee provided under Section 234E is lacking the basic element of any services to be rendered to the deductor. As per the petitioners, since the basic requirements are not satisfied for Section 234E, the said Section 234E is *ultra vires* to the Constitution. It has also been contended by the petitioner in the main petition that the intimation given under Section 200A of the Act by the respondent to the respective petitioners for making demand of levy fee under Section 234E for the respective financial year are illegal and invalid and unenforceable in law.

5. The learned Single Judge after hearing all the respective petitioners and the respondents for the reasons recorded in the impugned order ultimately found that, Section 234E is not suffering from any vices for being declared as *ultra vires* to the Constitution and he held that the impugned Section 234E of the Act is *intra vires* to the Constitution and ultimately dismissed all the petitions. Under the

circumstances, the present appeals have been preferred by some of the original petitioners out of the group of the petitioners before this Court.

6. We have heard learned Senior Counsel Mr.Kumar and Mr.A.Shankar, appearing for the appellants and Mr.K.V.Aravind, learned counsel appearing for Income Tax Department.

7. We may at the outset record that, learned counsel appearing for both sides have made submissions which shall be dealt with appropriately at the later stage. But, in order to appreciate the controversies including that of the background, certain aspects deserve to be taken note of which are as under:

8. As per Section 200(3) of the Act read with Rule 31A of the Income Tax Rules, 1962 (hereinafter referred to as 'Rules') a tax deductor is required to file quarterly statement of such taxes deducted at source by him as TDS and for the period in question, the relevant dates for filing of such statement is as follows:

- (i) 30th June – 15th July of the financial year;
- (ii) 30th September – 15th October of the financial year;

- (iii) 31st December – 15th January of the financial year;
- and
- (iv) 31st March – 15th May of the following financial year.

9. It may be recorded that Section 200(3) requiring to file formal TDS statement within the aforesaid each quarter was inserted on 1.4.2005 and at the relevant point of time, Section 272A(2)(k) provided for the penalty of Rs.100/- per day for each day of default in filing TDS statement and such provision also came to be inserted with effect from 1.4.2005. On 1.4.2010, Section 200A was inserted providing for the processing of the TDS statement and the consequent issuance of the intimation to the deductor, the same determined as payable by it or refundable by it. But, the relevant aspect is that, in initial provisions of Section 200A, there was no reference for fee payable under Section 234E.

10. On 1.7.2012, Section 234E providing for levying of fee of Rs.200/- per day for each day of default in filing TDS statement was inserted. Section 234E for ready reference is reproduced and the same reads as under:

Fee for default in furnishing statements.

234E. (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.

11. Similarly, Section 271H was inserted with effect from 1.7.2012 providing for imposition of penalty for default in filing TDS statement and also for furnishing of incorrect information in such TDS statement. The proviso was inserted in Section 272A providing for no penalty under the said section will be imposed after 1.7.2012 for failure to file TDS statement on time possibly because a separate Section 271H was inserted in the Act. Section 271H will be relevant for our

purpose and same for ready reference is reproduced and it reads as under:

“Penalty for failure to furnish statements, etc.

271H. (1) Without prejudice to the provisions of the Act, [the Assessing Officer may direct that a person shall pay by way of] penalty, if, he—

(a) 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: or

(b) furnishes incorrect information in the statement which is required to be delivered or caused to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he had delivered or cause to be delivered the statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.

(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.”

12. On 1.6.2015, clauses (c) to (f) came to be substituted under Section 200A providing that the fee under

Section 234E can be computed at the time of processing of the return and the intimation could be issued specifying the same payable by the deductor as fee under Section 234E of the Act. Section 200A would also be relevant in the present matter. Hence, the same for ready reference is reproduced as under:

“Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source ⁶⁹[or a correction statement] has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:—

- (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
- (c) the fee, if any, shall be computed in accordance with the provisions of section 234E;
- (d) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;
- (e) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:]

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
 - (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.
- (2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralised processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section."

13. When the returns for TDS filed by the respective appellant-petitioners were processed in purported exercise of the power under Section 200A, the amount of fee under Section 234E is computed and determined. The demand is made and the intimation given under Section 200A includes the computation and the determination of the fee payable by the appellant-petitioners.

14. We may now deal with the contentions raised by the learned counsel for the appellants. The first contention for assailing the legality and validity of the intimation under

Section 200A was that, the provision of Section 200A(1)(c)d and (f) have come into force only with effect from 1.6.2015 and hence, there was no authority or competence or jurisdiction on the part of the concerned Officer or the Department to compute and determine the fee under Section 234E in respect of the assessment year of the earlier period and the return filed for the said respective assessment years namely all assessment years and the returns prior to 1.6.2015. It was submitted that, when no express authority was conferred by the statute under Section 200A prior to 1.6.2015 for computation of any fee under Section 234E nor the determination thereof, the demand or the intimation for the previous period or previous year prior to 1.6.2015 could not have been made.

15. Whereas, the learned counsel appearing for the respondent-Department made two fold submissions;

16. One was that, by virtue of Section 234E, the liability to pay fee had already accrued since there was failure to submit return either under Section 200(3) of the Act or under Section 206C (3) of the Act. Section 234E can be said as a charging Section generating the liability to pay the fee

therefore, irrespective of a fact or the aspect that sub-section (1c), (1d), 1(e) & (1f) were inserted by way of substitution in Section 200A, when the fee was payable the aforesaid insertion of the aforesaid clause and Section 200A (1) (c)(d) (e) and (f) would not result into nullifying the liability to pay fee under Section 234E of the Act. Hence, in his submission, it cannot be said that the demand or the intimation by way of computation of the fee under Section 234E is invalid or unwarranted or is without jurisdiction.

17. The examination of the aforesaid contentions show that, Section 234E has come into force on 1.7.2012. Therefore, one may at the first blush say that, since Section 234E is a charging section for fee, the liability was generated or had accrued, if there was failure to deliver or cause to be delivered the statement/s of TDS within the prescribed time. But, in our view, Section 234E cannot be read in isolation and is required to be read with the mechanism and the mode provided for its enforcement. As observed by us hereinabove, when Section 234E was inserted in the Act simultaneously, Section 271H was also inserted in the Act providing for the penalty for failure of furnishing of statements etc. Therefore, if

there was failure to submit the statement for TDS as per Section 234E, the fee payable is provided but the mechanism provided was that if there was failure to furnish statements within the prescribed date, the penalty under Section 271H (1) and (2) could be imposed. However, under sub-section (3) of Section 271H, the exception is provided that no penalty shall be levied for the failure referred to under clause (a) of sub-section (1) if the person proves that after paying TDS with the fee and interest the amount is credited and he had delivered or caused to deliver the statement within one year from the time prescribed for submission of the said statement. To put it in other words, for failure to submit the statements, the penalty provided under Section 271(1)(a) cannot be imposed if the deductor complies with the requirement of sub-section (3) of Section 271H. Hence, it can be said that the fee provided under Section 234E would take out from the rigors of penalty under Section 271H but of course subject to the outer limit of one year as prescribed under sub-section (3) of Section 271H. It can also be said that when the Parliament intended to insert the provisions of Section 234E providing for fee simultaneously the utility of

such fee was for conferring the privilege to the defaulter-deductor to come out from the rigors of penal provision of Section 271H. Be it recorded that, prior to Section 271H of the Act inserted in the statute book, the enforceability of requirement to file return under Section 200(3) and Section 206C(3) was by virtue of Section 272A(2)(k) of the Act which provided for the penalty of Rs.100/- per day for each day of default in filing TDS statements. But, when Section 234E was inserted with effect from 1.7.2012 simultaneously, a second proviso was added under Section 272A(2) with effect from 1.7.2012 as under:

“Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.

272A. (1) xxxx

(2) If any person fails—

- (a) to comply with a notice issued under sub-section (6) of section 94; or
- (b) to give the notice of discontinuance of his business or profession as required by sub-section (3) of section 176; or
- (c) to furnish in due time any of the returns, statements or particulars mentioned in section 133 or section 206 or section 206C or section 285B; or
- (d) to allow inspection of any register referred to in section 134 or of any entry in such register or to allow copies of such register or of any entry therein to be taken; or

- (e) to furnish the return of income which he is required to furnish under sub-section (4A) or sub-section (4C) of section 139 or to furnish it within the time allowed and in the manner required under those sub-sections; or
- (f) to deliver or cause to be delivered in due time a copy of the declaration mentioned in section 197A; or
- (g) to furnish a certificate as required by section 203 or section 206C; or
- (h) to deduct and pay tax as required by sub-section (2) of section 226;
- (i) to furnish a statement as required by sub-section (2C) of section 192;
- (j) to deliver or cause to be delivered in due time a copy of the declaration referred to in sub-section (1A) of section 206C;
- (k) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C;
- (l) to deliver or cause to be delivered the statements within the time specified in sub-section (1) of section 206A;
- [(m) to deliver or cause to be delivered a statement within the time as may be prescribed under sub-section (2A) of section 200 or sub-section (3A) of section 206C,]

he shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues:

Provided that the amount of penalty for failures in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns under sections 206 and 206C and ⁷¹[statements under sub-section (2A) or sub-section (3) of section 200 or the proviso to sub-section (3) or under sub-section (3A) of section 206C] shall not exceed the amount of tax deductible or collectible, as the case may be:

Provided further that no penalty shall be levied under this section for the failure referred to in clause (k), if such failure relates 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.

XXXXXXXXXX”

18. The aforesaid shows that in the clause (k) if the said failure relates to a statement referred to in sub-section (3) of Section 200 or the sub-section (3) of Section 206C, no penalty shall be imposed for TDS after 01.07.2012.

19. Hence, it can be said that, the mechanism provided for enforceability of Section 200(3) or 206C (3) for filing of the statement by making it penal under Section 272A (2) (k) is done away in view of the insertion of Section 271H providing for penal provision for such failure to submit return. When the Parliament has simultaneously brought about Section 234E, Section 271H and the aforesaid proviso to Section 272A(2), it can be said that, the fee provided under Section 234E is contemplated to give a privilege to the defaulter to come out from the rigors of penalty provision under Section 271H (1) (a) if he pays the fee within one year and complies with the requirement of sub-section (3) of Section 271H.

20. In view of the aforesaid observations and discussion, two aspects may transpire one, for Section 234E providing for fee and given privilege to the defaulter if he pays the fee and hence, when a privilege is given for a particular purpose which in the present case is to come out from rigors of penal provision of Section 271H(1)(a), it cannot be said that the provisions of fee since creates a counter benefit or reciprocal benefit in favour of the defaulter in the rigors of the penal provision, the provisions of Section 234E would meet with the test of *quid pro quo*.

21. However, if Section 234E providing for fee was brought on the state book, keeping in view the aforesaid purpose and the intention then, the other mechanism provided for computation of fee and failure for payment of fee under Section 200A which has been brought about with effect from 1.6.2015 cannot be said as only by way of a regulatory mode or a regulatory mechanism but it can rather be termed as conferring substantive power upon the authority. It is true that, a regulatory mechanism by insertion of any provision made in the statute book, may have a retroactive character but, whether such provision provides for a mere regulatory

mechanism or confers substantive power upon the authority would also be a aspect which may be required to be considered before such provisions is held to be retroactive in nature. Further, when any provision is inserted for liability to pay any tax or the fee by way of compensatory in nature or fee independently simultaneously mode and the manner of its enforceability is also required to be considered and examined. Not only that, but, if the mode and the manner is not expressly prescribed, the provisions may also be vulnerable. All such aspects will be required to be considered before one considers regulatory mechanism or provision for regulating the mode and the manner of recovery and its enforceability as retroactive. If at the time when the fee was provided under Section 234E, the Parliament also provided for its utility for giving privilege under Section 271H(3) that too by expressly put bar for penalty under Section 272A by insertion of proviso to Section 272A(2), it can be said that a particular set up for imposition and the payment of fee under Section 234E was provided but, it did not provide for making of demand of such fee under Section 200A payable under Section 234E. Hence, considering the aforesaid peculiar facts and circumstances,

we are unable to accept the contention of the learned counsel for respondent-Revenue that insertion of clause (c) to (f) under Section 200A(1) should be treated as retroactive in character and not prospective.

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

23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under Section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

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 1.6.2015 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.

25. As such, as recorded earlier, it is on account of the intimation received under Section 200A for making computation and demand of fees under Section 234E, the same has necessitated the appellant to challenge the constitutional validity of Section 234E. When the intimation of the demand notices under Section 200A is held to be without authority of law so far as it relates to computation and demand of fee under Section 234E, we find that the question of further scrutiny for testing the constitutional validity of Section 234E would be rendered as an academic exercise because there would not be any cause on the part of the petitioners to continue to maintain the challenge to constitutional validity under Section 234E of the Act. At this stage, we may also record that the learned counsels appearing for the appellant had also declared that if the impugned notices under Section 200A are set aside, so far as it relates to computation and intimation for payment of fee

under Section 234E, the appellant-petitioners would not press the challenge to the constitutional validity of Section 234E of the Act. But, they submitted that the question of constitutional validity of Section 234E may be kept open to be considered by the Division Bench and the Judgment of the learned Single Judge may not conclude the constitutional validity of Section 234E of the Act.

26. Under these circumstances, we find that no further discussion would be required for examining the constitutional validity of Section 234E of the Act. Save and except to observe that the question of constitutional validity of Section 234E of the Act before the Division Bench of this Court shall remain open and shall not be treated as concluded.

27. In view of the aforesaid observations and discussion, the impugned notices under Section 200A of the Act for computation and intimation for payment of fee under Section 234E as they relate to for the period of the tax deducted prior to 1.6.2015 are set aside. It is clarified that the present judgment would not be interpreted to mean that even if the payment of the fees under Section 234E already made as per demand/intimation under Section 200A of the Act for the TDS for the period prior to

01.04.2015 is permitted to be reopened for claiming refund. The judgment will have prospective effect accordingly. It is further observed that the question of constitutional validity of Section 234E shall remain open to be considered by the Division Bench and shall not get concluded by the order of the learned Single Judge.

28. The appeals are partly allowed to the aforesaid extent.

Considering the facts and circumstances, no order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sk/-