

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 24TH DAY OF MARCH 2022 / 3RD CHAITHRA, 1944

WP(C) NO. 1259 OF 2022

PETITIONER:

JIJI VARGHESE
IV/1007, GRACE AVENUE,
THANA, PUDUPARIYARAM,
PALAKKAD- 678733

BY ADVS.
SRI.P.J.ANILKUMAR
SRI.K.N.SREEKUMARAN
SRI.N.SANTHOSHKUMAR

RESPONDENTS:

- 1 INCOME TAX OFFICER (TDS)
AAYKAR BHAVAN,
ENGLISH CHURCH ROAD,
PALAKKAD, PIN - 678101
- 2 DEPUTY COMMISSIONER OF INCOME TAX
TDS CPC, AAYKAR BHAVAN,
SECTOR-3, VAISHALI, GAZIABAD,
UTTARPRADESH - 201010
- 3 CENTRAL BOARD OF DIRECT TAXES ,
NORTH BLOCK,
NEW DELHI - 110002,
REPRESENTED BY ITS CHAIRMAN
- 4 UNION OF INDIA
MINISTRY OF FINANCE,
DIRECT TAXES DEPARTMENT,
NEW DELHI, PIN - 110001
REPRESENTED BY ITS SECRETARY

BY ADVS.
SRI.CHRISTOPHER ABRAHAM, SC
SRI.MANU.S, ASGI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 24.03.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) No.1259 of 2022

Dated this the 24th day of March, 2021

JUDGMENT

As an assessee under the Income Tax Act, 1961, petitioner had deducted TDS for payments made by him and remitted the same to the Income Tax Department. While filing the statement of returns regarding the remittance of TDS, delay occurred. When the returns were processed, the second respondent, on noticing the delay in filing the statement of TDS remittance, levied late fee under section 234E of the Act.

2. By Ext.P1 to Ext.P9 intimations, petitioner was called upon to pay the late filing fee under section 234E of the Income Tax Act, 1961 (for short,'the Act'). As per the aforesaid intimations, amounts have been demanded as late fee for the periods from 2012-13 to 2014-15 on the basis of the provisions in section 234E of the Act, which is as follows:

“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-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.”

3. According to the petitioner, though section 234E of the Act was introduced by the Finance Act, 2012 with effect from 1st July, 2012, since petitioner is being demanded to pay, by Ext.P1 to Ext.P9, late fee for not filing the statement of tax deduction at source, it is necessary to refer to section 200A of the Act. It was further submitted that Section 200A(1) incorporated clause (c) only with effect from 01.06.2015. Sub-clause (c) to section 200A (1) refers to the fee if any to be computed in accordance with the provisions of section 200A(1)(e). It is the claim of the petitioner that till 01.06.2015 petitioner cannot be mulcted with any liability to pay late fee for non filing of any statement of tax deduction at source.

4. A statement has been filed by the respondents objecting to the claim of the petitioner. It is averred that the demands of late filing fee under section 234E of the Act were raised by orders issued from 2013 till 2016 and that the demands are still outstanding. The intimations issued by the department were all appealable orders under section 246A of the Act and the petitioner failed to challenge the levy of late fee. In such circumstances, the demands have become final and the petitioner has accepted the demands.

Respondents also pleaded that the delay is a ground to refuse an appropriate relief so as to avoid unsettling the settled things. Relying upon the decisions in **State of Maharashtra v. Digambar** (AIR 1995 SC 1991), **G.C.Gupta and Others v. N.K.Pandey and Others** [(1988) 1 SCC 316] and **State of M.P. And Another v. Bhailal Bhai** (AIR 1964 SC 1006), it was asserted that the delay must defeat the claim raised by the petitioner.

5. I have heard Sri.P.J.Anilkumar, learned counsel for the petitioner, Sri.Christopher Abraham, learned Standing Counsel for the respondents 1 to 3 as well as Sri.S.Manu, learned Assistant Solicitor General of India for the fourth respondent.

6. I have considered the rival contentions.

7. In the decision in **M/s.Sarala Memorial Hospital v. Union of India and Another** (W.P.(C) No.37775 of 2018) an identical question arose for consideration. After considering the statutory provisions of section 234E and section 200A of the Act and the implications of the amendment brought in to the Act, it was held that the amendment would take effect only from 1st June, 2015 and is thus prospective in nature. The aforesaid judgment has become final and is binding upon the authorities. Thus the jurisdiction to levy late

fee under section 234E arises only from 01-06.2015 and not earlier.

8. As regards the contention on the delay, though the said contention was impressive on first blush, it can be seen that the nature of challenge raised by the petitioner is based upon the lack of jurisdiction of the respondents to impose late fee. Since in matters where total lack of jurisdiction is alleged, delay cannot be relied upon as a ground to deny the relief, this Court is of the view that the objections of the respondents are without any basis.

9. Further the decisions cited are distinguishable on the facts of those cases itself. In the decision in **Digambar's** case (supra), the delay of 20 years in approaching the High Court for grant of compensation for alleged utilization of the land was held as a decisive factor to disentitle the petitioner therein. Similarly in **G.C.Gupta's** case (supra) the issue related to seniority and petitioners challenged the orders of confirmation and determination of inter se seniority only after 15 years. In the decision in **Bhailal Bhai's** case (supra) the question related to refund of tax claimed belatedly. None of those cases related to a total lack of jurisdiction or authority.

10. In view of the above, the demand in Ext.P1 to Ext.P9

intimations for the period from 2012-13 to 2014-15 is bereft of authority and cannot be legally sustainable.

11. Accordingly, I quash Ext.P1 to Ext.P9 intimations to the extent it demands late fee under section 234E for the period from 2012-13 till 01.06.2015.

The writ petition is therefore allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

Corrigendum Dated 30.03.2022

The words "Dated this the 24th day of March, 2021" in the header of the judgment shall be read as "Dated this the 24th day of March, 2022".

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX OF WP (C) 1259/2022

PETITIONER'S/S' EXHIBITS

EXHIBIT P1 INTIMATION U/S 234E, AGAINST 26Q OF Q2
FOR F.Y: 2012-13 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P2 INTIMATION U/S 234E, AGAINST 26Q OF Q3
FOR F.Y: 2012-13 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER.

EXHIBIT P3 INTIMATION U/S 234E, AGAINST 26Q OF Q4
FOR F.Y: 2012-13 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P4 INTIMATION U/S 234E, AGAINST 26Q OF Q1
FOR F.Y: 2013-14 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P5 INTIMATION U/S 234E, AGAINST 26Q OF Q3
FOR F.Y: 2013-14 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P6 INTIMATION U/S 234E, AGAINST 26Q OF Q4
FOR F.Y: 2013-14 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P7 INTIMATION U/S 234E, AGAINST 26Q OF Q1
FOR F.Y: 2014-15 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P8 INTIMATION U/S 234E, AGAINST 26Q OF Q2
FOR F.Y: 2014-15 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P9 INTIMATION U/S 234E, AGAINST 26Q OF Q3
FOR F.Y: 2014-15 ISSUED BY THE 2ND
RESPONDENT TO THE PETITIONER

EXHIBIT P10 NOTICENO.ITBA/COM/F/17/2021-22/
1037769392(1) ISSUED BY THE 1ST
RESPONDENT REGARDING TDS DUES INCLUDING
LATE FEE UNDER 234E