

Bombay High Court:

## Section 234E of Income Tax Related to Late Fee for Default in furnishing TDS statements is Constitutionally Valid

Rashmikant Kundalia vs. UOI | Writ Petition No.771

The Bombay HC has upheld the Section 234E and fails to deposit it to the authorities within the prescribed period. A division bench of Chief Justice Mohit Shah and Justice B P Colabawalla heard a petition by chartered accountants whose clients were served notices, challenging the constitutional validity of section 234 E of the Act.

The constitutional validity of the same has also been challenged in various High Courts (Madhya Pradesh, Odisha, Karnatka & Kerala) in which interim stays has been granted.

### Petitioner challenged that:

- ❑ Section 234E as ultra vires and violative of Article 14 of the Constitution of India
- ❑ The prime argument was a “fee” could be levied only when a service was rendered and in the absence thereof, the said section seeks to collect tax in the guise of tax. However in the present case it was a honorary services provided to the IT Department by deducting tax of other assesseees and depositing it with the revenue.
- ❑ Also it was argued that the section 234E was extremely onerous on the ground that the Assessing Officer has no power to condone or there are no provisions for appeal against the order.

### Revenue contended that:

- ❑ The delay in filing TDS return causes lot of troubles to the Income Tax Department and hampers the timely processing of income tax returns of assesseees seeking credit of TDS and hence non-filing of the TDS return/statements by the deductor in a timely manner has multitude effects eroding the credibility of an efficient tax administration system

### The bench said that:

- ❑ The Section is Not punitive but a fee for the extra service which the department has to provide due to the late filing of the TDS statements.
- ❑ Late submission creates additional work including revising assessment orders and paying interest on refunds.
- ❑ The bench said the legislature took note that a substantial number of deductors were not furnishing their TDS returns/statements within the prescribed time which was absolutely essential.
- ❑ The aggrieved party can always move the court under the extra ordinary equitable jurisdiction under Article 226 / 227 of the Constitution of India.
- ❑ Thus, Ruling that the section 234E of the Act is not ultra vires the Constitution.