

1. **Levy of fee u/s 234E is constitutionally valid.** On a perusal of sub-section (1) of section 234E, it is clear that a fee is sought to be levied *inter alia* on a person who fails to deliver or cause to be delivered the TDS return/statements within the prescribed time in sub-section (3) of section 200. The fee prescribed is Rs.200 for every day during which the failure continues. Sub-section (2) further stipulates that 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. Due to late submission of TDS statements the department is burdened with extra work which is otherwise not required if the TDS statements were furnished within the prescribed time. This fee is for the payment of the additional burden forced upon the department. A person deducting the tax (the deductor), is allowed to file his TDS statement beyond the prescribed time provided he pays the fee as prescribed under section 234E. In other words, the late filing of the TDS return/statements is regularised upon payment of the fee as set out in section 234E. This is nothing but a privilege and a special service to the deductor allowing him to file the TDS return/statements beyond the time prescribed by the Act and/or the rules. Therefore, the argument of the petitioners that the fee that is sought to be collected under section 234E is really nothing but a collection in the guise of a tax was not agreeable. **Rashmikant Kundalia v. Union of India[2015] 275 CTR 166 (Bombay).**
2. **Benefit of concessional rate of tax u/s 115E in respect of investment income is not available to income earned by way of short-term capital gains upon sale of bonus shares.** Investment income as contended by the assessee would be a genus and include all income arising out of investment, including the sale of the investment. This is for the reason that although sale of investment would normally be on capital account, yet in view of the artificial definition of income under section 2(24)(vi) capital gains chargeable to tax under section 45 would be income for purposes of the Act. If the aforesaid interpretation to section 115E as canvassed by the assessee is accepted, then the explicit mentioning of the words 'income by way of long-term capital gains' would not have been necessary in addition to 'Investment Income'. Chapter XII-A of the Act itself makes a distinction between income derived from an asset and an income arising on sale of assets, leading to long-term capital gains. The later is a case of income being attributable to sale of assets. The income arising on sale of assets leading to short-term capital gains is not income derived from foreign exchange asset so as to qualify as investment income within the meaning of section 115E. **Commissioner of Income-tax, Mumbai v. Sham L. Chellaram [2015] 275 CTR 245 (Bombay)(MAG.)**