

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **725/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2015-16

**Shree Basaveshwar Sugars
Limited.,**
No.6, Mallikarjun Badvane,
Manguli Road,
Ganesh Nagar,
Vihayapura (Bijapur),
Karnataka – 586 109.

The Addl.CIT,
Vs. TDS Range,
Panaji - Goa

PAN: AANCS 3203R

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri P.M. Kathir, Advocate
: Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 25.04.2023

घोषणा की तारीख/Date of Pronouncement : 25.04.2023

आदेश /ORDER

PER MAHAVIR SINGH, VP:

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-19, Chennai in ITA No.193/2020-21 dated 10.08.2022. The assessment was framed by the Income Tax Officer, TDS Ward, Belgaum for the assessment

years 2015-16 u/s.201 (1) / 201(1A) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 28.01.2016. The penalty under dispute was levied by the Addl.CIT, TDS Range, Panaji-Goa u/s.271(1)(c) of the Act vide order dated 31.05.2018.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in levying penalty u/s.271(1)(c) of the Act for non-deduction of TDS and not deposited the same in the Income-Tax account.

3. Brief facts are that the assessee company is having its sugar factory at Vijayapura near Hubballi, Karnataka. Income-tax Department conducted survey u/s.133A of the Act to verify compliance of TDS / TCS provisions on the premises of the assessee on 06.10.2015. During survey it was found that the assessee failed to deduct TDS for certain payments that were made by it. Accordingly, the AO framed assessment u/s.201(1) and 201(1A) of the Act, wherein he determined TDS liability at Rs.12,25,183/- and interest of Rs.1,83,777/- vide order dated 28.01.2016. The AO thereby raised demand of Rs.14,83,003/-. Consequently, the AO also initiated penalty proceedings u/s.271(1)(c) of the Act for failure to TDS on whole of the amount or any part of the same as required under the provisions of Chapter XV11-B of the Act. The assessee

filed response vide letter dated 24.05.2018 and stated that it had complied with the audit proceedings and also paid the TDS demand created u/s.201(1) and interest thereon u/s.201(1A) of the Act. But the AO has not considered the submission of the assessee and levied penalty u/s.271(1)(c) of the Act amounting to Rs.12,25,183/-. Aggrieved assessee preferred appeal before the CIT(A).

4. The CIT(A) has not accepted the reasonable cause cited by assessee and he find no merit in the same and confirmed the penalty by observing in para 4.4 as under:-

4.4 Further, in this connection the appellant relied upon the the decision of the Hon'ble Delhi High Court in CIT V ITOCHU Corpn. reported in [2004] 139 taxman 348 (Delhi). In this case the Hon'ble Delhi High Court upheld the decision of ITAT Delhi in which the Hon'ble ITAT held that there was a reasonable cause existed for not deducting tax at source which are covered by the provisions of section 273B. The decision was merely on the basis of reasonable cause. The reasonable causes submitted by the appellant are different from the causes mention in the referred case-law by the appellant. Even the residential status is also different from the assessee of the referred case. The reasonable causes given by the AR of the appellant are not acceptable and discussed one by one as follows.

- This can not be an acceptable reason that the appellant company was in the initial stage of setting up the plant. Setting up the plant has no relation with the failure to deduct the tax at source.
- The other reason of lack of fund is also not acceptable as the tax had to be deducted out of the certain payments that were made by the appellant.
- The third reason of inadequate knowledge is completely not true because it was found from the records that the appellant had deducted the TDS on certain payment made by it. In view of this it can not be accepted that the appellant was not aware of the TDS provision.

In view of all above, I do not find any merit in this appeal. Penalty order does not require any interference. The grounds raised in this appeal are hereby dismissed.

Aggrieved, assessee is in appeal before us.

5. We have heard rival contentions and gone through facts and circumstances of the case. Now before us the assessee filed complete details of TDS demand created by the AO including interest u/s.201(1) & 201(1A) of the Act amounting to Rs.14,83,003/-. The assessee paid these demand of RS.14,94,785/- vide various challans enclosed in its submissions filed on 25.04.2023. We noted that the assessee has deducted the amount of TDS of Rs.12,25,183/- from several parties but has not remitted the same to the Central Government account as per the provisions of section 200(1) of the Act. This fact has been noted by the AO in his opening para which reads as under:-

“During the course of survey proceedings it is noticed that the deductor has deducted an amount of Rs.12,25,183/- as TDS from several parties. However, the deductor has not remitted this amount of Rs.12,25,183/- to the central government account as per the provisions of section 200(1) of the Income Tax Act, 1961. As per the provisions of Sec.200(1) of the Income Tax Act, 1961 any person deducting any sum in accordance with the provisions of Chapter XVII-B shall pay within the prescribed time the sum deducted to the central government account. The deductor was asked to furnish the proof of remittance of tax deducted at source amounting to Rs.12,25,183/-”

Once this is a fact that the assessee has deducted the TDS, no penalty can be levied for non-deduction of TDS in view of the decision of the Hon'ble Supreme Court in the case of US Technologies International Pvt. Ltd., vs. CIT in Civil Appeal No.7934 of 2011 dated 10.04.2023, wherein it is held as under:-

“7.5 At the outset, it is required to be noted that all these cases are with respect to the belated remittance of the TDS though deducted by the assessee and therefore, Section 271C(1)(a) shall be applicable. At the cost of repetition, it is observed that it is a case of belated remittance of the TDS though deducted by the assessee and not a case of nondeduction of TDS at all.

7.6 As per Section 271C(1)(a), if any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVIIB then such a person shall be liable to pay by way of penalty a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid. So far as failure to pay the whole or any part of the tax is concerned, the same would be with respect to Section 271C(1)(b) which is not the case here. Therefore, Section 271C(1)(a) shall be applicable in case of a failure on the part of the concerned person/assessee to “deduct” the whole of any part of the tax as required by or under the provisions of Chapter XVIIB. The words used in Section 271C(1)(a) are very clear and the relevant words used are “fails to deduct.” It does not speak about belated remittance of the TDS. As per settled position of law, the penal provisions are required to be construed strictly and literally. As per the cardinal principle of interpretation of statute and more particularly, the penal provision, the penal provisions are required to be read as they are. Nothing is to be added or nothing is to be taken out of the penal provision. Therefore, on plain reading of Section 271C of the Act, 1961, there shall not be penalty leviable on belated remittance of the TDS after the same is deducted by the assessee. Section 271C of the Income Tax Act is quite categorical. Its scope and extent of application is discernible from the provision itself, in unambiguous terms. When the nondeduction of the whole or any part of the tax, as required by or under the various instances/provisions of Chapter XVIIB would invite penalty under Clause 271C(1)(a); only a limited text, involving subsection (2) of Section 115O or covered by the second proviso to Section 194B alone would constitute an

instance where penalty can be imposed in terms of Section 271C(1)(b) of the Act, namely, on nonpayment. It is not for the Court to read something more into it, contrary to the intent and legislative wisdom.

7.7 At this stage, it is required to be noted that wherever the Parliament wanted to have the consequences of nonpayment and/or belated remittance/payment of the TDS, the Parliament/Legislature has provided the same like in Section 201(1A) and Section 276B of the Act.

7.8 Section 201(1A) provides that in case a tax has been deducted at source but the same is subsequently remitted may be belatedly or after some days, such a person is liable to pay the interest as provided under Section 201(1A) of the Act. The levy of interest under Section 201(1A) thus can be said to be compensatory in nature on belated remittance of the TDS after deducting the same. Therefore, consequences of nonpayment/belated remittance /payment of the TDS are specifically provided under Section 201(1A).

7.9 Similarly, Section 276B talks about the prosecution on failure to pay the TDS after deducting the same. At this stage, it is required to be noted that Section 271C has been amended subsequently in the year 1997 providing Sections 271C(1)(a) and 271C(1)(b). As observed hereinabove, fails to pay the whole or any part of the tax would be falling under Section 271C(1)(b) and the word used between 271C(1)(a) and 271C(1)(b) is “or”. At this stage, it is required to be noted that Section 276B provides for prosecution in case of failure to “pay” tax to the credit of Central Government. The word “pay” is missing in Section 271C(1)(a).

8. Now so far as the reliance placed upon the CBDT’s Circular No. 551 dated 23.01.1998 by learned ASG is concerned, at the outset, it is required to be noted that the said circular as such favours the assessee. Circular No. 551 deals with the circumstances under which Section 271C was introduced in the Statute, for levy of penalty. Paragraph 16.5 of the above Circular reads as follows:

“16.5: Insertion of a new section 271C to provide for levy of penalty for failure to deduct tax at source under the old provisions of Chapter XXI of the Income Tax Act no penalty was provided for failure to deduct tax at source. This default, however, attracted prosecution under the provisions of Section 276B, which prescribed punishment for failure to deduct tax at source or after deducting failure to pay the same to the Government. It was decided that the

first part of the default, i.e., failure to deduct tax at source should be made liable to levy of penalty, while the second part of the default, i.e., failure to pay the tax deducted at source to the Government which is a more serious offence, should continue to attract prosecution. The Amending Act, 1987 has accordingly inserted a new Section 271C to provide for imposition of penalty on any person who fails to deduct tax at source as required under the provisions of Chapter XVIIIB of the Act. The penalty is of a sum equal to the amount of tax which should have been deducted at source.”

On fair reading of said CBDT's circular, it talks about the levy of penalty on failure to deduct tax at source. It also takes note of the fact that if there is any delay in remitting the tax, it will attract payment of interest under Section 201(1A) of the Act and because of the gravity of the mischief involved, it may involve prosecution proceedings as well, under Section 276B of the Act. If there is any omission to deduct the tax at source, it may lead to loss of Revenue and hence remedial measures have been provided by incorporating the provision to ensure that tax liability to the said extent would stand shifted to the shoulders of the party who failed to effect deduction, in the form of penalty. On deduction of tax, if there is delay in remitting the amount to Revenue, it has to be satisfied with interest as payable under Section 201(1A) of the Act, besides the liability to face the prosecution proceedings, if launched in appropriate cases, in terms of Section 276B of the Act.

Even the CBDT has taken note of the fact that no penalty is envisaged under Section 271C of the Income Tax Act for nondeduction TDS and no penalty is envisaged under Section 271C for belated remittance/ payment/deposit of the TDS.

8.1 Even otherwise, the words “fails to deduct” occurring in Section 271C(1)(a) cannot be read into “failure to deposit/pay the tax deducted.”

8.2 Therefore, on true interpretation of Section 271C, there shall not be any penalty leviable under Section 271C on mere delay in remittance of the TDS after deducting the same by the concerned assessee. As observed hereinabove, the consequences on nonpayment/belated remittance of the TDS would be under Section 201(1A) and Section 276B of the Act, 1961.

9. In view of the above in all these cases as the respective assesseees remitted the TDS though belatedly and it is not case of nondeduction of the

TDS at all they are no liable to pay the penalty under Section 271C of the Income Tax Act. Therefore, any question on applicability of Section 273B of the Act is not required to be considered any further.

10. In view of the above and for the reasons stated above, all these appeals succeed. Impugned judgment(s) and order(s) passed by the High Court are hereby quashed and set aside and the question of law on interpretation of Section 271C of the Income Tax Act is answered in favour of the assessee(s) and against the Revenue and it is specifically observed and held that on mere belated remitting the TDS after deducting the same by the concerned person/assessee, no penalty shall be leviable under Section 271C of the Income Tax Act. Present appeals are accordingly allowed. No costs.”

In view of the decision of the Hon'ble Supreme Court, we delete the penalty and allow the appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25th April, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th April, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.