



* **HIGH COURT OF DELHI : NEW DELHI**

ITA Nos.649 & 678 of 2007

% Judgment reserved on: 25th July, 2007

Judgment delivered on: 2nd August, 2007

**COMMISSIONER OF INCOME TAX (TDS)
DELHI-XVII, MAYUR BHAWAN, NEW DELHI**

....Appellant

Through: Mrs. P.L. Bansal, Adv.
Vs.

**GENERAL ENGINEERING WORKS
7th Floor, Kanchanjunga Building,
18, Barakhamba Road, New Delhi**

..... Respondent

Through: None

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA**

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B. GUPTA, J.

The common question involved in both the appeals is as to whether Income Tax Appellate Tribunal (for short as



'Tribunal') was right in deleting the penalty imposed by the Assessing Officer under Section 272A(2)(g) of the Income Tax Act, 1961 (for short as 'Act').

2. These two appeals have been filed by the Revenue against the common order dated 4th September, 2006 passed by the Tribunal in ITA No.4417 and 4418/Del/2004 for the Assessment Year 2000-01 whereby the ITAT deleted the penalties imposed by the Assessing Officer on the ground that there was a reasonable cause with the Assessee for failure to issue the TDS certificates within the stipulated time.

3. The Assessee has filed TDS return and it was noticed by the Income Tax Officer that the Assessee had not issued TDS certificate within the prescribed time. Since there was delay, the matter was referred to Joint Commissioner of Income Tax for penalty.

4. Show cause notice under Section 272A(2)(g) read with Section 274(1) of the Act was issued to the Assessee to explain the reason for said default.

5. The Assessee explained that the firm was incurring heavy losses over the years and its revenue generating



activities had been hampered due to labour unrest and since most of employees had left there was no experienced person to look after the tax matters. There was no malafide intention of the Assessee in issuing TDS certificate late.

6. The Assessing Officer was not satisfied with the explanation furnished by the Assessee and as such he imposed penalty.

7. The Assessee challenged the order of the Assessing Officer by filing appeal before Commissioner of Income Tax (Appeal) [CIT(A) for brevity]. CIT(A) deleted the penalty holding that the default committed by the Assessee could not be termed so grave as to merit imposition of penalty.

8. Thereafter, Revenue challenged the order of CIT(A) before the Tribunal and the Tribunal vide impugned order deleted penalty holding that there was reasonable cause with the Assessee for failure to issue the TDS certificates within the stipulated time.

9. Learned counsel for the Revenue has contended that negligence or inaction on the part of the Assessee would not constitute a reasonable cause within the meaning of Section 273B of the Act and for imposing penalty under



Section 272A(2)(g), mens rea is not required and as soon as the default is committed, the penalty has to be levied.

10. In support of her contentions learned counsel cited a decision of the Supreme Court reported as ***Gujarat Travancore Agency v. Commissioner of Income Tax, [1989] 177 ITR 455.***

11. In Gujarat Travancore's case [supra], the Assessee did not file its income tax return under the Act within the statutory period and thereafter Income Tax Officer initiated penalty proceedings against the Assessee and imposed penalty upon him. The explanation of the Assessee that he was under the bonafide belief that he had no assessable income and had, therefore, not filed the returns earlier was not accepted by the Income Tax Officer.

12. The Tribunal allowed the appeal holding that the Income Tax Officer had failed to bring on record any material to show that the explanation of the Assessee tendered before him in regard to the delay should not be accepted, and that as the element of mens rea was required to be proved but had not been proved, the penalties were



liable to be canceled.

13. On reference to the High Court, it took the view that mens rea need not be established before penalty is imposed under Section 271(1)(a) of the Act and this view was upheld by the Apex Court.

14. The question whether there was a reasonable cause for which the requirement of relevant provisions could not be complied with is primarily and essentially a question of fact to be decided in each case on consideration of material placed before the concerned authority. Where the explanation of the Assessee has been accepted as constituting a sufficient cause for the default in question, the order of Tribunal is concluded by the findings of fact based on appreciation of evidence and the material that was placed before it. In such a case, the Tribunal can be held fully justified in upholding the order of the First Appellate Authority which deleted the penalty.

15. In the case in hand, the Tribunal after considering all the facts held:-

"the Assessee company was under lockout since 16th June, 2000 which has not only affected the production, but also carrying



out other statutory obligations. As a result of lockout, most of the employees have left and Assessee was forced to work with skeleton staff and no senior/experienced person was left for looking after tax matters. Levy of penalty under section 272A(2)(g) is subject to reasonable cause as stipulated under section 273B. As per section 273B, no penalty shall be imposable if the Assessee proves that there was reasonable cause for failure to issue the TDS certificate within the stipulated time. In the context of levy penalty, the work 'reasonable cause' would mean cause which is beyond the control of the Assessee. "Reasonable cause" means cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction for want of bona fides, from issuing the necessary forms in time. Where there is no want of bonafides can be imputed to the Assessee, the word "sufficient cause" should receive liberal construction so as to advance substantial justice. In the instant case committed by the Assessee due to delay in issue of TDS certificate would not have termed so grave as to merit the regard of penalty. The penalty provisions of the Income Tax Act should not be construed in a manner to make them an instrument of oppression. The levy of penalty is to be seen in the backdrop of the nature and reasons for which the penalty is imposed. The facts and circumstances of the instant case do not warrant imposition of penalty."

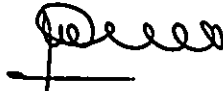
16. Similarly, in the present case, sufficient reason has been given by the Assessee for not issuing the TDS

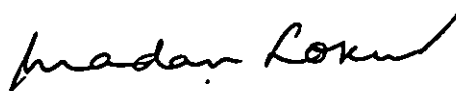


certificate within the prescribed period and the decision of Apex Court cited by learned counsel for the Revenue is not applicable to the facts of the present case.

17. Under these circumstances, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

18. Accordingly, the present appeal filed by the Revenue is not maintainable and the same is hereby, dismissed.


(V. B. GUPTA)
JUDGE


(MADAN B. LOKUR)
JUDGE

2nd August, 2007
RS