



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

+ **ITA No. of 703/2007**

% **Judgment delivered on: August 06, 2007**

**Commissioner of Income Tax (TDS)**

**Delhi-XVII, Mayur Bhawan, New Delhi**

**..... Appellant**

**Through : Ms. P.L. Bansal, Advocate.**

**Versus**

**Global Infosystems Limited**

**B-26, Shivalik, Malviya Nagar,**

**New Delhi -110017**

**..... Respondent**

**Through : None.**

**CORAM:**

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

**HON'BLE DR. JUSTICE S. MURALIDHAR**

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**



✓

**MADAN B. LOKUR, J. (ORAL)**

**CM No. 9929/2007**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**ITA No. 703/2007**

The Revenue is aggrieved by an order dated 27th October, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' in ITA Nos. 2260/Del/2004 and 2261/Del/2004 for the financial years 2001-02 and 2002-03.

2. The only issue that arises in this case is with regard to the quantum of penalty for failure on the part of the Assessee to deposit TDS. The Assessing Officer required the Assessee to pay 100% penalty under Section 221 of the Income Tax Act, 1961. According to learned counsel for the Revenue this was because the Assessee did not offer any valid explanation for failure to deposit the TDS.

*ITA No. 703/2007*

*Page No. 2 of 5*



3. In appeal, the Commissioner of Income Tax (Appeals) reduced the penalty amount to 10% of the total tax and this view of the Commissioner was upheld by the Tribunal. That is how the Revenue is before us under Section 260A of the Income Tax Act, 1961.

4. Having gone through the order passed by the Tribunal as well as having heard learned counsel for the Revenue, we find that it has come on record that the Assessee had rendered all possible cooperation with the Income Tax Department during the proceedings under Section 201 (1) and Section 201 (1A) of the Act. The tax due was deposited, though admittedly after some delay, but this was only the first such instance of default committed by the Assessee.

5. The Guwahati High Court in *Braja Lal Bamli vs. State of Tripura* (1990) 78 STC 283 (Guh) as well as the Kerala High Court in the case of *K. Rajendran Nair vs. State of Kerala and Others* (1999) 116 STC 266



(Kerala) took the view that the maximum penalty should not be imposed

mechanically but only for discernible reasons. The Gauhati High Court

held:

“The quantum of penalty, subject to the maximum fixed by the statute, has been left to the discretion of the authority concerned and the said discretion being a judicial discretion must be exercised on a consideration of all the relevant facts and circumstances of the case, including the degree of contumaciousness involved. The maximum penalty should be reserved only for exceptionally bad cases.”

6. We are satisfied, having gone through the record, that there was no illegality committed by the Commissioner as well as by the Tribunal in imposing the penalty of only 10%, as there were no special reasons warranting imposition of the maximum penalty. The authorities have exercised their discretion in accordance with law and have committed no error.

7. No substantial question of law arises.



8. Dismissed.

*Madan Lokur*

Madan B. Lokur, J

*S. Muralidhar*

S, Muralidhar, J

August 06, 2007

sk

Certified that the corrected copy of the judgment has been transmitted in the main Server.