IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

ITA.No. 139 of 2013 ()

AGAINST THE ORDER IN ITA 385/Coch/2011 of I.T.A.TRIBUNAL,COCHIN BENCH
DATED 11-01-2013

APPELLANT(S)/RESPONDENT:

THE COMMISSIONER OF INCOME TAX (TDS),
COCHIN.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL, GOI(TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT(S)/APPELLANT:

MR.THOMAS MUTHOOT, MUTHOOT HOUSE,
KOZHENCHERRY, 689 303.

R1 BY ADV. SRI.T.M.SREEDHARAN (SR.)
R1 BY ADV. SRI.V.P.NARAYANAN
R1 BY ADV. SMT.DIVYA RAVINDRAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 29-06-2015 , ALONG WITH ITA. 177/2013, THE COURT ON 03-07-2015 DELIVERED THE FOLLOWING:

APPENDIX IN ITA.139/13

APPELLANTS' EXHIBITS:

ANNEXURE A: COPY OF ORDER U/S 271C (JT.C.I.T.) DATED 23/07/2009 FOR THE ASSESSMENT YEAR 2006-07.

ANNEXURE B: COPY OF THE ORDER DATED 28/12/2011 OF THE COMMISSIONER OF INCOME TAX (APPEALS).

ANNEXURE C: COPY OF THE ORDER DATED 11/01/2013 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH ITA NO.385/COCH/2011.

ANNEXURE D: KERALA HIGH COURT'S ORDER IN I.T.APPEAL NO.17/2008 DATED 26/02/2009 IN COMMISSIONER OF INCOME TAX, TRIVANDRUM VS MUTHOOT BANKERS ANDFINANCERS, TRIVANDRUM, COPY OF THE JUDGMENT OF THE KERALA HIGH COURT.

/TRUE COPY/

PS TO JUDGE

C.R.

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

I.T.A.Nos.139 & 177 of 2013

Dated this the 3rd day of July, 2015

JUDGMENT

Antony Dominic, J.

1.These appeals are filed by the Revenue challenging the common order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA Nos.385/Coch/2011 and 391/Coch/2011.

2.Briefly stated the relevant facts are that the respondents are Partners of a firm M/s.Muthoot Estate Investments. They had drawn funds from the firm over and above their respective capital and paid interest to the firm on the amounts overdrawn by them. Accordingly, respondent in ITA No.139/13 paid a sum of ₹1,39,00,000/- and the respondent in ITA No.177/13 paid a sum of ₹6,28,28,000/- as interest to the firm. Both of them did not deduct tax at source on the interest paid by them and noticing this as a violation of Section 194A of the Income Tax Act, 1961 (hereinafter, the 'Act', for short) the Joint Commissioner of Income Tax levied penalty under

Section 271C. Accordingly, ₹15,69,664/- and ₹70,49,302/- were levied as penalty on the respondents in ITA Nos.139/13 and 177/13, respectively. The penalty orders were confirmed by the Commissioner (Appeals). The further appeals filed before the Tribunal were allowed and the impugned order was passed holding that the relief entertained by the assessees that they were not liable to deduct tax at source on the interest paid by them to the partnership firm can be considered as a reasonable cause as contemplated under Section 273B of the Act. The Tribunal also took note of the fact that the firm had included the interest it had received in its return of income and that since the firm had declared loss, it was not liable to pay any tax and hence there was no revenue loss. It was on these grounds the Tribunal set aside the order passed, deleted the penalty levied under Section 271C of the Act and allowed the appeals. It is this order, which is challenged by the Revenue in these appeals and the questions of law formulated are:

1. Whether, on the facts and in the circumstances of the case, the tribunal is right in law and fact in cancelling the penalty levied under Sec.271C?

2. Whether, on the facts and in the circumstances of the case and also in the light of the specific exemption provided in section 194A (3)(iv) to such income credited or paid by a firm to a partner of the firm, the assessee is reasonably entitled to entertain the belief that payment of interest by the partners to the firm is similar or similarly placed?

3. Whether, on the facts and in the circumstances of the case and in the absence of an issue of debate being raised by the assessee, the Tribunal is right in law and fact in introducing the concept of debate in the order and is not the order based on a "debatable issue" extraneous and perverse?"

3.We heard the senior Standing Counsel for the Revenue and also the learned senior counsel for the respondent assessees.

4.Section 194A of the Act requires any person, not being an individual who is exempted, and responsible for paying to a resident any income by way of

interest other than income by way of interest on securities, shall deduct income tax thereon at the rates in force, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by cheque or draft or by any other mode. Section 271C of the Act provides that if any person fails to deduct the whole or any part of the tax as required to be deducted by or under the provisions of Chapter XVII-B, then such 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. Section 271C(2) provides that any penalty imposable under sub section (1) shall be imposed by the Joint Commissioner of Income Tax. As per Section 273B, notwithstanding anything contained in the provisions of Section 271C, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the Section, if he proves that there was reasonable cause for such failure.

5.A survey of the above statutory provisions show that if an individual who is liable to deduct tax at

source under Section 194A commits default in doing so, automatically, Section 271C is attracted and he is liable to be levied penalty as provided therein. However, that absolute liability to be penalised is softened by section 273B by providing such person an opportunity to prove that his failure to comply with Section 194A was for a reasonable cause. It is therefore evident that in order to escape from the levy of penalty, it is for the assessee to prove that he had reasonable cause for his non-compliance with section 194A and the burden of proving the reasonable cause is entirely on the assessee. The Act does not define the term 'reasonable cause'. It is a standard of proof which is applied to a set of facts or actions to prove whether a reasonable person have come to the same conclusion or acted in the same way given the totality of the circumstances.

6. In this context, it is also relevant to note that in Commissioner of Income Tax v. Sri Jagdish Prasad Choudhary [(211) ITR 472], a Full Bench of the Patna High Court has interpreted the expression “reasonable cause”, as follows:

> "The word "reasonable cause" has not been defined under the Act but it could receive the same interpretation which is given to the expression "sufficient cause". Therefore, in the context of the penalty provisions, the word "reasonable cause" would mean a cause which is beyond the control of the assessee. "Reasonable cause" obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides, from furnishing the return in time".

7. Subsequently, A Division Bench of the Delhi High Court in its judgment in Deputy Commissioner of Income-Tax v. Adinath Industries [(252) ITR 471] held thus:

> "Reasonable cause, as applied to human actions is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition; for an attempt to give a specific mean ing to the word "reasonable" is trying to count what is not number and measure what is not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. The word "reasonable" has in law the prima facie meaning of reasonable

> with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know see In re, A Soilicitor [1945] KB 368 (CA)). Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides."

8. The same Division Bench of the Delhi High Court in its judgment in Woodward Governor India P. Ltd. v. Commissioner of Income-Tax and Others [(253) ITR 745] held thus:

> "Reasonable cause" as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. It can be described as probable cause. It means an honest belief founded upon reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautions man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do. The cause shown has to be considered and only if it is found to be frivolous, without substance or foundation, the prescribed consequences follow."

9.Bearing in mind the above provisions of the Act and principles, the facts of the case are to be seen. The case pleaded by the assessees was that they were under the bonafide belief that under Section 194A, they were not liable to deduct tax at source on the interest paid by a partner to the firm. In other words, the substance of the plea of the assessees was that they were ignorant of their statutory liability to deduct tax at source on the interest paid by them to the firm of which they are partners. While Section 194A provided for deduction of tax on interest, by virtue of the provisions contained in sub section (3), only such income credited or paid by a firm to a partner of the firm is exempted from deduction. The language of the provision does not leave scope for any ambiguity on the liability of a partner to deduct tax on interest paid by him to the firm and there is absolutely no warrant for a belief to the contrary. That being the legal position, we do not know how the assessees, who admittedly are persons having the services of experienced chartered accountants at their disposal, could entertain a belief that they

were not liable to deduct tax at source on the interest paid to the firm. This, therefore, means that the alleged belief of the assessees is certainly not one a reasonable person would have entertained nor such persons would have acted in the same way given the totality of circumstances.

10. Therefore, we cannot accept the plea that the belief allegedly entertained by the assessees was a bonafide one or could be accepted as a reasonable cause as provided under Section 273B.

11. In effect, the defence put forward by the assessees is one of ignorance of law. Ignorance of law, it is trite, is no excuse in law and if that be so, ignorance of law cannot also be a reasonable cause as contemplated under Section 273B. This view has been taken by the Apex Court in Sitaram Ramcharan v. M.N.Nagrashana [AIR 1960 SC 260].

12. The learned counsel for the assessees contended that Section 194A excludes 'person' from the liability to deduct tax at source. Therefore, according to the

learned counsel, the very proceedings against the assessees is untenable. We are unable to accept this contention. First of all, this contention was not raised before any one of the authorities, including the Tribunal and the parties proceeded thus far, on the conceded basis that the assesees had the liability under Section 194A. That apart, unless the assessees establish by evidence that they are entitled to the coverage of the proviso to Section 194A(1), they cannot claim the benefit of exclusion. This proviso reads thus:

> "Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interests is credited or paid, shall be liable to deduct income tax under this Section."

13. Reading of the proviso shows that unless the facts which are required to be established to attract the proviso are made out, such a claim of exclusion

cannot be entertained. In this case, such facts are not established and therefore, we are not in a position to entertain this plea raised for the first time before us. True the counsel contended that the question raised being one of the law can be raised before this Court, in our view, the question raised is not a pure question of law but is a mixed question of law and facts.

14. Learned counsel for the assessee relied on the judgment in Hindustan Coca Cola Beverage (P) Ltd. v. Commissioner of Income Tax [(2007) 293 ITR 226 (SC)] to support his contention that the penalty levied is untenable. In our view, a reading of this judgment itself would show that even in cases where default is committed, though tax cannot be recovered again, penalty and interest can be recovered.

15. As contended by the learned counsel, it may be true that penalty levied under section 201 read with Section 221 has been set aside by the Tribunal accepting the plea of "good and sufficient" reasons urged by the assessees. However, the object of these

provisions being different from section 194A read with Section 271C, such an order passed by the Tribunal cannot come to the rescue of the assessees. In any case, principles of res-judicata and estoppel are alien to tax jurisprudence and therefore, this contention also cannot improve the case of the assessees. One another reason which has weighed with the Tribunal is that the firm had declared the interest received in its return and that since the firm had returned loss and was not liable to any tax, no loss was caused to the revenue. In our view, even if the findings are factually correct, statutory provisions do not recognize this as a defence in a proceeding under Section 271C. As we have already found, the only way out is by establishing "reasonable cause" as provided in Section 273B of the Act. When default in deducting tax at source attracts proceedings for penalty under Section 271C and when 273B is the only escape route, the declaration of receipt of income by the firm or that it did not have liability to pay tax are, to say the least, irrelevant and immaterial.

For all the aforesaid reasons, the orders of the Tribunal are unsustainable and are accordingly set aside. Answering the questions of law raised in favour of the revenue, these appeals are allowed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

kkb.