

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.451 of 2015

State Bank of India Raj Bhawan Branch having its office at Raj Bhawan Campus, P.O. Raj Bhawan P.S. Sachivalaya through its Branch Manager, Shri Rakesh Kumar, son of Shri Shyam Bihari Prasad resident of Flat No. F 202 Mundeshwari Enclave P.O. B.V. College P.S. Rajiv Nagar, District Patna.

... .. Appellant/s

Versus

Additional Commissioner of Income Tax Range-2 Patna having its office Revenue Building, Beer Chand Patel Marg, Patna.

... .. Respondent/s

with

Miscellaneous Appeal No. 452 of 2015

State Bank of India Raj Bhawan Branch having its office at Raj Bhawan Campus, P.O. Raj Bhawan P.S. Sachivalaya through its Branch Manager, Shri Rakesh Kumar, son of Shri Shyam Bihari Prasad resident of Flat No. F 202 Mundeshwari Enclave P.O. B.V. College P.S. Rajiv Nagar, District Patna.

... .. Appellant/s

Versus

Additional Commissioner of Income Tax, Range-2, Patna.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 451 of 2015)

For the Appellant/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax Deptt.

(In Miscellaneous Appeal No. 452 of 2015)

For the Appellant/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Mrs. Archana Sinha, Sr. SC, Income Tax Deptt.

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-08-2023

The appeals arise from the orders of the Tribunal for the assessment year 2003-04. One confirming the levy of interest under Section 201 of the Income Tax Act, 1961 (for



brevity, 'the Act') and the other confirming the order of penalty under Section 271C of the Act. The order impugned in M.A. No. 451 of 2015, which is against the imposition of interest under Section 201 raises the following questions of law.

- (i) Whether the Tribunal erred in holding that the Government entities or its constituents were liable to deduction of tax at source notwithstanding the exemption available to them from payment of tax in respect of their total income?*
- (ii) Whether in the facts and circumstances of the case, the interest levied under Section 201 was proper?*

2. In M.A. No. 452 of 2015, the only question arising is as to:

Whether in the facts and circumstances of the case penalty was leviable under Section 271C, especially, when there was no purposeful evasion of tax intended by the assessee?

3. On facts, with respect to the relevant assessment year, the appellant-Bank had paid interest to various entities, which were styled as payments made to Government and hence not liable for any tax deduction at source. The Assessing Officer found otherwise. An appeal was filed to the Commissioner of Income Tax under section 264 of the Act. The Commissioner of Income Tax found that the assessee-Bank had deducted tax at



source in accordance with the provisions of 194A in respect of certain depositors; while the assessee failed so to do in the case of the other depositors; finding them to be entitled to exemption from payment of tax. With respect to the defective declarations, the Commissioner permitted the assessee to cure the defects before the Assessing Officer. Insofar as the remaining depositors, whose interest payments were made without deduction of tax at source, without any declaration in Form-15 furnished, the assessee was held liable to pay tax and interest. A rectification petition under Section 154 of the Act was filed, which was rejected by order dated 25.08.2010. A writ petition was filed in which Annexure-8 judgment was passed. The Commissioner, TDS, was directed to decide the application for rectification made by the petitioner-Bank under Section 154 on merits after giving opportunity of hearing to the petitioner Bank.

4. Both on the levy of interest and penalty, the Commissioner passed orders under Section 264 / 154 of the Act dated 15.03.2012, which are produced in both the appeals as Annexure-9. The Commissioner found an amount of interest coming to Rs. 5,42,470.13/-, paid to various departments of the Police under the Government, not liable for deduction of tax at source. The Commissioner found the same to be a mistake



apparent on the record and rectified it, under Section 264 deducting the said amount from the total amount payable.

5. By the order produced as Annexure-9 in M.A. No. 451 of 2015, the Tribunal found the amount of TDS default for the relevant assessment year to be Rs.1,36,040/- and the Assessing Officer was directed to pass revised order under Section 201 of the Act. Similarly, reckoning the deduction made under Annexure-9 produced in M.A. No. 452 of 2015, the Commissioner restricted the penalty under Section 271C to Rs.74,669/-. Both the orders of the Commissioner were confirmed by the Tribunal by Annexure-8 orders produced in both the appeals.

6. Before us the learned counsel for the appellants Sri D. V. Pathy did not argue on the liability to tax deduction at source with respect to the various entities as listed out in the order under Section 264 read with Section 152 of the Act. But it was argued that the tax deduction was not made on bonafide belief of exemption. We have to only notice Section 194A, which mandates deduction of tax from interest payable by any person to a resident, at the time of credit of such interest income to the account of the payee or at the time of payment thereof by cash or by issuance of a cheque or draft or by any other mode.



Sub-section (3) of Section 194A provides for circumstances in which the provisions of sub-section (1) are not applicable. The entities to which interest was paid, without deduction of tax at source, does not come under any of the contingencies of sub-section (3) and there is no notification issued by the Central Government under sub-clause(iii)(f) of the said provision. Hence, the first question raised in M.A. No. 451 of 2015 has to be answered in favour of the revenue and against the assessee.

7. The second question framed in M.A. No. 451 of 2015 is the levy of interest, which is automatic under Section 201 of the Act. As per Section 201, dealing with consequences of failure to deduct or pay, any person including the Principal Officer of a Company, who is required to deduct any sum in accordance with the provisions of the Act; if he does not deduct or does not pay or after so deducting fails to pay the whole or any part of the tax, then such person shall be deemed to be an assessee in default, in respect of such tax and shall also be liable to pay tax under sub-section 1(A) of Section 201 of the Act.

8. There can be no question urged on the automatic statutory consequence as coming forth from Section 201. The second question framed in M.A. No. 451 of 2015, is also answered in favour of the revenue and against the assessee.



9. The further question raised is on the sustainability of the levy of penalty, especially relying on the decision of the Hon'ble Supreme Court ***Union of India v. Rajasthan Spg. & Wvg. Mills, (2009) 13 SCC 448.***

10. The learned counsel for the appellant Sri D.V. Pathy also raised a contention that despite the direction of this Court in Annexure-8 judgment to consider the issue on merits under Section 154, there is no consideration of the question whether the penalty could be levied at all, in Annexure-9 order passed by the Commissioner of Income Tax.

11. The learned counsel would seek for a remand, for such consideration in compliance with the judgment of this Court. In this context, we specifically notice the Tribunal's observations with respect to the identical ground raised before it of non-consideration of all the grounds despite a clear direction by the High Court. It was recorded by the Tribunal "*He (the learned counsel for the assessee) conceded not to press the said grounds and also to the instant appeals being decided on the basis of the assessee's contention*" (sic). In the above circumstances, the assessee cannot be allowed to raise the said contention again before this Court.

12. In any event, we find that the question is



inextricably linked with the imposition of penalty as coming out from the order. Especially, when, there is no dispute as to the requirement to deduct tax at source from the interest payment to the entities; who were found to be not eligible to exemption from tax liability. The imposition of interest under Section 201 and penalty under Section 271C of the Act on grounds of failure to deduct tax at source, is statutory and automatic.

13. ***Rajasthan Spg. & Wvg. Mills*** (supra) considered the question of penalty under Section 11AC of the Central Excise Act, 1944, and whether it applies to every case of non-payment or short payment of duty, regardless of conditions expressly mentioned in Section 11AC, for its application. It was found that the main body of Section 11AC lays down the conditions and circumstances that would attract penalty; being the absence of levy or non-payment or short levy or short payment or an erroneous refund by reasons of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty. The proviso to sub-section(1) of Section 11A and Section 11AC use the same expression and insofar as the period of limitation for levy of penalty under Section 11AC, it stands extended from the



normal period of one year to five years. Hence, if a notice under Section 11A states that, the escaped duty was a result of any conscious and deliberate wrong doing and in the order passed under Section 11A(2), there is a legally tenable finding to that effect, only then the provision under Section 11AC would get attracted. In the absence of such an allegation, though the escaped duty may be reclaimed within one year, there cannot be any imposition of penalty under Section 11AC. Section 11 AC, in paragraph no. 29 of the said judgment, was declared to be *“punishment for an Act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the Section”* (sic).

14. We have to examine the provision under Section 271C in the background of the aforesaid declaration of law made based on the specific words employed in the provision under Section 11AC. Section 271C does not have any restriction insofar as the penalty being leviable only on the conscious wrong doing or deliberate deception by the assessee. The mere failure to deduct the whole or any part of the tax as required under the provisions of Chapter-XVII-B, 115-O(2)(i) and the second proviso to Section 194B(ii) would be liable to penalty. The assessee's claim of exemption from tax by reason of the



interest being paid to Government entities cannot be sustained. Exemption from tax is a statutory mandate, to be decided by the authorities under the Income Tax Act and not the assessee. There is hence no ground to absolve the imposition of penalty, as discernible from the words employed in the provision; which is distinct and different from those employed in Section 11AC of the Central Excise Act. The question with respect to the sustainability of a penalty on the facts and circumstances of the case is found in favour of the revenue and against the assessee.

15. The appeals stand dismissed answering all the questions in favour of the revenue and against the assessee.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.08.2023.
Transmission Date	

