M/s Woodward Governor (India) Ltd. - Petitioner @HASH Commr of Income Tax-XVII and Others

Court: DELHI HIGH COURT

Date of Decision: Oct. 5, 2016

Acts Referred: Income Tax Act, 1961 - Section 264, Section 271C

Citation: (2016) 389 ITR 65

Hon'ble Judges: S. Ravindra Bhat and Deepa Sharma, JJ.

Bench: Division Bench

Advocate: Mr. Piyush Kaushik, Advocate, for the Petitioner; Mr. Rahul Kaushik, Sr. Standing for Income Tax, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The writ petitioner challenges an order of the CIT made under Section 264 of the Income Tax Act 1961. The revisional authority had by

impugned order upheld the order of the AO that there was no reasonable cause in the facts of the case and that penalty under Section 271-C had

to be levied.

2. The AO had for the financial assessment year i.e. AY 1999-2000, ruled that the assessee/petitioner was to be treated one deducted under

Section 201(1), given the facts of this case. This order was ultimately decided in the assesse"s favour by this court in the case of Commissioner

of Income Tax v. Woodward Governor India (P). Ltd. reported in 2008 (172) Taxman 269 (Delhi), the revenue carried that judgment in

the appeal. Since common questions of law were involved, the assessee appeal was that along with those of other companies. Eventually, the court

decided the appeal in its judgment Commissioner in Income Tax v. M/s Eli Lilly and Co (I) Pvt. Ltd. (2009) 312 ITR 225 (SC). The

Supreme Court set aside the judgment of this court and remitted the matter to the AO for compliance with its direction. The court, however,

expressed its opinion with respect to the levy of penalty under Section 271C rather decisively in Para 35.

35. Section 271C inter alia states that if any person fails to deduct the whole or any part of the tax as required by 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. In these cases

we are concerned with Section 271C(1)(a). Thus Section 271C(1)(a) makes it clear that the penalty leviable shall be equal to the amount of tax

which such person failed to deduct. We cannot hold this provision to be mandatory or compensatory or automatic because under Section 273B

Parliament has enacted that penalty shall not be imposed in cases falling thereunder. Section 271C falls in the category of such cases. Section

273B states that notwithstanding anything contained in Section 271C, no penalty shall be imposed on the person or the assessee for failure to

deduct tax at source if such person or the assessee proves that there was a reasonable cause for the said failure. Therefore, the liability to levy of

penalty can be fastened only on the person who do not have good and sufficient reason for not deducting tax at source. Only those persons will be

liable to penalty who do not have good and sufficient reason for not deducting the tax. The burden, of course, is on the person to prove such good

and sufficient reason. In each of the 104 cases before us, we find that non-deduction of tax at source took place on account of controversial

addition. The concept of aggregation or consolidation of the entire income chargeable under the head ""Salaries"" being exigible to deduction of tax

at source under Section 192 was a nascent issue. It has not be considered by this Court before. Further, in most of these cases, the tax deductor-

assessee has not claimed deduction under Section 40(a)(iii) in computation of its business income. This is one more reason for not imposing penalty

under Section 271C because by not claiming deduction under Section 40(a)(iii), in some cases, higher corporate tax has been paid to the extent of

Rs. 906.52 lacs (see Civil Appeal No. 1778 of 2006 entitled CIT v. The Bank of Tokyo-Mitsubishi Ltd.). In some of the cases, it is

undisputed that each of the expatriate employees have paid directly the taxes due on the foreign salary by way of advance tax/self-assessment tax.

The tax deductor-assessee was under a genuine and bona fide belief that it was not under any obligation to deduct tax at source from the home

salary paid by the foreign company/HO and, consequently, we are of the view that in none of the 104 cases penalty was leviable under Section

271C as the respondent in each case has discharged its burden of showing reasonable cause for failure to deduct tax at source.

3. In the operative portion, the Supreme Court has held as follows -

38. For the reasons mentioned herein above, however, no penalty proceedings under Section 271C shall be taken in any of these cases as the

issue involved was a nascent issue. Accordingly we quash the penalty proceedings under Section 271C.

4. In view of this subsequent development, the petition has to succeed, the impugned order of the CIT and the penalty imposed by the AO under

Section 271 C are hereby quashed.

5. The writ petition is allowed in the above terms.