NC: 2025:KHC:4829-DB
ITA No. 1184 of 2006

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 3RD DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

INCOME TAX APPEAL NO. 1184 OF 2006

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE, C. R. BUILDING,
QUEENS ROAD, BANGALORE

2. THE DEPUTY COMMISSIONER OF INCOME TAX
T.D.S., C.R. BUILDING,
QUEENS ROAD, BANGALORE

...APPELLANTS

(BY SRI. E.I. SANMATHI, ADV.)

AND:

M/S JINDAL TRACTEBEL POWER CO. LTD.,
PO BOX NO.9, VILLAGE AND PO TORANGALU,
DISTRICT BELLARY - 583123.

...RESPONDENT

(BY SRI SUHAIL DUTT, SR. COUNSEL A/W
R.S. MITTAL & MISS SEEMA BANSAL, ADV. FOR
SRI. T.S. VENKATESH, ADV. FOR C/RESPONDENT.)

THIS I.T.A IS FILED UNDER SECTION 260A OF INCOME TAX ACT, 1961 ARISING OUT OF ORDER DATED 4.5.2006 IN ITA 100/B/99 FOR THE ASSESSMENT YEAR 1996-97 1. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE AND ETC.,

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT
and
HON'BLE MR JUSTICE G BASAVARAJA

ORAL JUDGMENT
(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This appeal by the Revenue seeks to call in question the order dated 04th May, 2006 whereby the Income-Tax Appellate Tribunal, Bengaluru has negatived Revenue's Appeal in ITA/100/BANG/1999 wherein the CIT (Appeals)-IV order dated 20.01.1999 for the Assessment Years 1996-97 and 1997-98 to the extent levy of penalty u/s.271C of the Income Tax Act, 1961, was set aside, came to be confirmed. We hasten to add that the appeal on taxability against the said order is not subject matter of this appeal.

2. Foundational facts of the case:

2.1 The respondent-company for the Assessment Years in question did not effect TDS from the monies payable to M/s.Raython Ebaseo Overseas Ltd., presumably a foreign entity (USA), under the contract relating to supply &

services of off-shore equipments. This it did on the professional advice that no tax is required to be deducted by way of TDS inasmuch as no income is deemed to accrue or arise in India pursuant to subject off-shore contract. In fact, the foreign entity REOL ie., the regular Assessee had applied for advance ruling seeking a final opinion in this regard. For a particular period such a TDS was effected & remitted to the Revenue, is also a fact borne out by record.

2.2 In the above fact matrix, order u/s.201(1) of the Act was passed by the ACIT (TDS) for the two Assessment Years on the ground that the Assessee failed to deduct and pay taxes on time in respect of payments made to REOL on account of the contract in question. Interest u/s.201(A) was also levied for the said default. The DCIT (TDS) initiated penalty proceedings u/s.271(C) for failure to deduct tax. Disregarding the explanation offered by the respondent herein, penalty came to be levied u/s.271(C) for the subject years and that was confirmed on appeal. However, the CIT agreed with the explanation offered by the respondent and granted relief to it observing that the non-deduction of TDS was not tainted with *mala fide;* there is reasonable cause shown for not deducting.

2.3 The Revenue challenged the said order before the Tribunal contending that initially TDS having been

deducted was remitted and only subsequently deduction has not been done; there is absolutely no justification whatsoever for not effecting deduction; the explanation offered by the entity does not constitute a reasonable cause in terms of Sec.273(B) of the Act and therefore penalty ought to have been sustained in terms of Sec.271(C) of the Act. This having not being acceded to by the Tribunal, the Revenue is in appeal before us.

2.4 A Co-ordinate Bench of this court vide order dated 27.07.2007 admitted the appeal on the following substantial question of law:

> *"Whether the Tribunal was correct holding that the assessee's short deduction of TDS and belated transfer of the TDS amount deducted to the department was due to reasonable cause and penalty could not be levied without taking into account that all these clarification regarding legal position was taken by the assessee due to the survey conducted by the department pursuant to which the defect was pointed of, and consequently the penalty levied under Section 271C of the Act by Assessing Officer was justified?"*

3. Having heard the learned counsel for the parties and having perused the appeal papers, we decline indulgence in the matter essentially on the ground that the above question based on which appeal is admitted for consideration does not have sufficient trappings of law,

much less substantial question of law. Sec. 260(A)(1) of the Act which is relevant for our consideration reads as under:

> *"An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal, if the High Court is satisfied that the case involves a substantial question of law".*

3.1 It hardly needs to be stated the concept of substantial question of law enacted in the above provision textually approximates to the one enacted in Sec.100 of CPC, 1908 vide a Co-ordinate Bench (KSDJ & PKBJ) decision in PR. COMMISSIONEROF INCOME TAX vs. M/S.ENNOBLE CONTRUCTION[1]. Ordinarily when a question is to be answered by turning the pages of statute book, it partakes the character of question of law. Salmond's Jurisprudence[2], has the following text:

> *"It is commonly said that all questions which arise for consideration and determination in a court of justice are of two kinds, being either questions of law or questions of fact…. The term question of law is used in three distinct though related senses. It means, in the first place, a question which the court is bound to answer in accordance with a rule of law – a question which*

[1] (2022) 447 ITR 444

[2] Twelfth Edition, Sweet & Maxwell, 1966 at page 65

> *the law itself has authoritatively answered, to the exclusion of the right of the court to answer the question as it thinks fit in accordance with what is considered to be the truth and justice of the matter. All other questions are questions of fact – using the term fact in its widest possible sense to include everything that is not law. In this sense, every question which was not been predetermined and authoritatively answered by the law is a question of fact – whether it is, or is not, one of fact in any narrower sense which may be possessed by that term. …".*

Ordinarily, a substantial question of law is said to be involved when answer to it affects the outcome of proceedings that are put in challenge in appeal. It is true that there can be substantial questions of law even in other factual circumstances as when the finding is perverse or it is recorded without evidentiary basis, or it is contrary to law or suffers from the vice of procedural irregularity, or the like. However, that is not the case of Appellant-Revenue. In the instant case, the Revenue has only challenged the fact finding of the Tribunal to the effect that there is a reasonable cause for not deducting TDS. We hasten to add that had the *indicia* of reasonable cause being enacted or indicated by law, there arguably could arise a question of law and sometimes it may graduate to a substantial question of law too.

3.2 Section 271C of the Act as amended by Finance Act, 1997 w.e.f. 01.06.1997, which is pressed into service by both the sides has the following text:

> *"**271C. Penalty for failure to deduct tax at source***
> *(1) If any person fails to-*
> *(a)deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or*
> *(b)pay the whole or any part of the tax as required by or under,-*
> *(i) sub-section (2) of section 115-O; or*
> *(ii) The proviso to section 194-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.*
>
> *(2) Any penalty imposable under sub-section (1) shall be imposed by the [Joint Commissioner]."*

The text of this section is plain. It makes failure to deduct tax liable for penalty. The Joint Commissioner can impose penalty in a sum equal to the amount of tax not deducted or paid. Sec.273B which begins with a non obstante clause as amended by Act 46 of 1986 w.e.f. 10.09.1986 provides that no penalty is imposable for any failure to deduct or pay tax deducted, if the Assessee proves that there was a reasonable cause for that. The Apex Court in **CIT vs. ELI LILLY & CO. (INDIA) (P) LTD**.[3] has at para 94 observed as under:

[3] (2009) 15 SCC 1

> *"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…."*.

3.3 Hon'ble Delhi High Court, in ***WOODWARD GOVERNOR INDIA VS. CIT***[4]*,* has reiterated the principle that a clause beginning with 'notwithstanding anything' is appended to a section in the beginning with a view to give the enacting part of the section, in case of a conflict, an overriding effect over the provisions of Act mentioned in the non obstante clause. The effect of this section is to cast the initial burden on the assessee to prove that he had a reasonable cause for the failure referred to in the various sections; thereafter, the officer has to consider whether the explanation offered by the assessee or other person as regards the reason for failure was on account of a reasonable cause, and non-consideration of assessee's explanation would vitiate the order. *Bona fide* belief

[4] (2002) **253 ITR 745 DEL**

coupled with the genuineness of the transactions would constitute a reasonable cause. In Woodward *supra* the court also considered the meaning of 'reasonable cause' and held: "Reasonable cause' as applied to human action is that which would constrain a person of average intelligence and ordinary prudence".

3.4 Learned Sr. Advocate appearing for the respondent is more than justified in contending that whether a set of circumstances which an entity furnishes for failure to deduct or pay tax in terms of Sec.271C amounts to a reasonable cause u/s.273B of the Act does not amount to any question of law, the focus being the truthfulness & plausibility of pleaded circumstances, the former being a matter of evidence and the later being of prudence. Following Woodward, another Division Bench of the same court in ***COMMISSIONER OF INCOME TAX v. ITOCHU CORPORATION***[5], has observed as under:

> "*The Division Bench again reiterated what constitutes "reasonable cause" in the case of Woodward Governors India (P) Ltd v. CIT and Others, 253 ITR 745. In view of what is stated hereinabove, we are of the view that the issue, whether there was reasonable cause or not for the Assessee not to deduct tax at source is a question of fact which has been determined by the Tribunal. As such, no substantial question of law arises.*"

We are broadly in agreement with the above decisions.

[5] 2004(75) DRJ 337 (DB) at paragraph 7

3.5 A Division Bench of Madras High Court in ***COMMISSIONER OF INCOME-TAX v. VISWAPRIYA FINANCIAL SERVICES AND SECURITIES LIMITED***[6], at paragraph 8 of the judgment, observed thus:

> *"From a reading of the above, it is clear that the Tribunal has accepted the explanation and given a finding that there is a reasonable cause for not deducting the tax at source. The finding that there is a reasonable cause is a only a question of fact and also it is not perverse. Hence, the Tribunal is justified in deleting the penalty levied under Section 271C of the Act. The concurrent finding given by both the authorities below are based on valid materials and evidence. In the case of CIT v. P. Mohanakala MANU/SC/7712/2007:[2007]291ITR278(SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court."*

3.6 Assuming that the question framed by the Revenue on the basis of which appeal is admitted, answers the description of substantial question of law, let us examine whether the explanation offered by the respondent constitutes a reasonable cause: The respondent in its reply to the notice in question specifically stated that the non-deduction of tax for the subject period was due to the *bona fide* belief formed on the basis of the legal opinion obtained at the hands of M/s.Singhania & Co., a Law Firm

[6] (MANU/TN/7657/2007)

of repute; and the opinion of a Chartered Accountant's Firm namely Lovelock & Lewis. This apart, the regular Assessee had applied on 11.09.1997 seeking advance ruling and that the Chairman of the Advance Ruling Authority did not process the same for personal reasons. Added, what benefit the respondent could derive by not deducting the tax at source, is also a factor. All these certainly constitute a reasonable cause for not effecting TDS and therefore the impugned orders being consistent with the same are not vulnerable for challenge, as rightly contended by learned Sr. Advocate appearing for the respondent.

3.7 We will not be fair if we do not consider the submission of learned Panel Counsel for the Revenue that this appeal be deferred till after the appeal in ITA No.3025 of 2005 connected with ITA Nos.3022 & 3023 of 2005 are heard & decided. Alternatively he said that this appeal be taken up along with the said appeal. We declined this request and reasons for that are not far to seek: Firstly, the appeal at hand is independent, in the sense that regardless of what is going to happen to the other appeal, matter can be decided. Secondly, there is no reason or rhyme for keeping small matters like this for counting the pendency of cases, with no purpose whatsoever. We hasten to add that should other appeal be decided in favour of the regular Assessee, this matter virtually would

become infructuous, is also true. However, that is no ground for deferring the consideration of matter as rightly submitted by Mr.Suhail Dutt appearing for the respondent.

In the above circumstances, this appeal fails.

Costs made easy.

We place on record our deep appreciation for the able assistance rendered by our Research Assistant Mr.Raghunandan K.S.

Sd/-
(KRISHNA S DIXIT)
JUDGE

Sd/-
(G BASAVARAJA)
JUDGE

Lnn/Snb
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