

## **No penalty if TDS default committed by partner on payments to firm due to bona-fide belief of non-deduction of tax**

**Summary – The Cochin ITAT in a recent case of Thomas Muthoot., (the Assessee) held that No penalty if TDS default committed by partner on payments to firm due to bona-fide belief of non-deduction of tax**

### **Facts**

- The assessee, partners in partnership firm paid interest to partnership firm on overdrawing/loan from the firm. But they had not deducted tax at source under section 194A on the interest paid by them to partnership firm.
- The Assessing Officer held that since the assessee had not deducted tax as required under section 194A at the time of making payment, penalty was to be levied under section 271C.
- Commissioner confirmed the said addition.
- On appeal:

### **Held**

- A bare reading of section 194A clearly says that any person not being an individual or HUF, who is responsible for paying to a resident any income by way of interest shall, at the time of credit of such income to the account of the payee, deduct income-tax thereon at the rate which is in force. Therefore, it is obvious that individual and HUF are exempted from the provisions of section 194A. The use of the words "any person not being an individual or a Hindu undivided family" clearly exempts individuals and HUFs. Therefore, the assessee being an individual is not expected to deduct tax while making interest payment to any person including the firm in which he is a partner. However, the proviso to section 194A(1) makes an exception in respect of individual whose the gross receipts exceeds the limit prescribed under section 44AB. In this case, the gross receipt of the assessee has exceeded the prescribed limit under section 44AB, therefore, the assessee has to deduct tax under section 194A(1) at the time of making payment.
- Now coming to the contention of the assessee that there was a reasonable cause for non-deduction of tax on surcharge, the question of reasonable cause has to be considered in the light of the provisions of section 273B at the time of levy of penalty. There is no question of reasonable cause for non-deduction of tax. Therefore, the Tribunal is of the considered opinion that the contention of the assessee has no merit.
- It is well settled principles of law that tax includes surcharge. Therefore, the Commissioner (Appeals) is not correct in saying that the order of this Tribunal in the assessee's own case is not applicable.

The order of this Tribunal in respect of non-deduction of tax is equally applicable in respect of non-deduction of tax on surcharge also. Therefore, the Commissioner (Appeals) is not justified in distinguishing the order of the Tribunal.

- In view of the above order, there was no justification to confirm the orders of the Commissioner (Appeals). Accordingly, the orders of the lower authorities are set aside and the penalty levied under section 271C in all appeals is deleted.