

## TDS default made by relying upon opinion of CA was bona fide mistake; not liable to penalty

**Summary – The High Court of Karnataka in a recent case of Filtrex Technologies (P.) Ltd., (the Assessee) held that where assessee-company made payment to a foreign company without deduction of tax at source on basis of certificate issued by Chartered Accountant, same was a bona fide mistake and hence, assessee was not liable to penalty for concealment of income**

### Facts

- The assessee was a company engaged in the manufacture of carbon blocks used in water purifying filters at residential buildings. It filed its return of income declaring the income at Rs. 4022 lakhs.
- The total income determined by the concerned Assessing Officer was Rs. 177 crores, including the fees of Rs. 7998 lakhs paid for technical services to 'F', Singapore. The enhancement of income by the Assessing Officer was due to three disallowances made under section 40(a)(ia).
- Out of three disallowances made by the Assessing Officer, two disallowances were deleted by the Commissioner (Appeals). However, disallowance of Rs. 7998 lakhs was sustained by the erstwhile Commissioner.
- The Assessing Officer treated the sum of Rs. 7998 lakhs both as concealment of income and furnishing of inaccurate particulars of income by the assessee and therefore initiated proceedings for levy of penalty under section 271(1)(c).
- The Commissioner (Appeals) allowed the appeal filed by the assessee concluding that the respondent has neither concealed the income nor furnished inaccurate particulars of income.
- The said order of the Commissioner (Appeals) is confirmed by the Tribunal.
- On appeal:

### Held

- The Commissioner (Appeals) and the Tribunal have concluded that the assessee herein has not indulged in furnishing of inaccurate particulars of income; the assessee herein has made payments to three different foreign parties out of which two payments were held not liable for deduction of tax; it is only the payment in respect of 'F', Singapore was held to be liable for deduction of tax; the assessee herein remitted the payments based on the certificate given by the Chartered Accountant; and no violations were reported in Form No. 3CD. On facts, both the authorities have concluded that failure to deduct tax by the assessee herein was a *bona fide* mistake and hence, this is not a case to levy penalty. It is also held by both the authorities that assessee has neither concealed the income nor furnished inaccurate particulars of income.
- In the matter on hand, the Chartered Accountant has given a certificate to the effect that the assessee is not required to deduct tax at source while making the payment to 'F', Singapore. Thus, the assessee acted on the basis of the certificate issued by the expert and hence the Commissioner

(Appeals) and the Tribunal have rightly concluded that this is not a fit case to conclude that the assessee has deliberately concealed the income or furnished inaccurate particulars of the income. The assessee has filed Form 3CD along with the return of income in which the Chartered Accountant has not reported any violation by the assessee under Chapter XVII-B which would attract disallowance under section 40(a)(ia).

- On reconsidering the entire material on record there is no ground to interfere with the impugned order passed by the Tribunal.