

No penalty on 'Aishwarya Rai' for TDS default if she relied on her CA's advice

Summary – The Mumbai ITAT in a recent case of Smt. Aishwarya Rai Bachchan, (the Assessee) held that Confirmation of demand raised under section 201, cannot be sole criteria for imposing penalty under section 271C

Facts

- Payment of US \$ 77,500 was made to a non-resident for development of website and other allied works by the assessee. It was submitted by the assessee, that not only the payment was made outside India but also for services rendered outside India. Hence, the provision of section 195 was not applicable.
- The Assessing Officer observed, website maintenance fell within the meaning of 'fees for technical services' as provided under section 9(1)(vii) read with Explanation -2. Assessing Officer treated the assessee as an assessee in default under section 201(1). Though, the assessee challenged the order passed under section 201 in appeal, ultimately she accepted her liability before Tribunal. On the basis of order passed under section 201/201(A), the Assessing Officer initiated proceedings for imposition of penalty under section 271C alleging failure to deduct tax at source under section 195.
- The assessee submitted that there was reasonable cause for not deducting tax at source. Due to the certificate issued by the Chartered Accountant stating that remittance was exempt from withholding tax at source.
- The Assessing Officer observed, once the assessee had accepted her liability under section 195, she cannot turn around and say that tax is not deductible by taking shelter under DTAA between India - USA and India Bulgaria, Assessing Officer, therefore, holding that assessee has failed to establish existence of reasonable cause for not deducting tax at source imposed penalty.
- Commissioner (Appeals) also confirmed imposition of penalty by holding that assessee having failed to deduct tax at source without any reasonable cause, was liable for penalty.
- On appeal:

Held

- No doubt, in the quantum proceedings before the Tribunal, the assessee has accepted her liability for deduction of tax at source, for whatever reason may be, and as a result the issue was decided against the assessee by the Tribunal by upholding the order passed under section 201(1). However, the issue is, merely because assessee was held liable for deduction of tax at source under section 195, whether automatically it will result in imposition of penalty under section 271C. On a careful reading of the provision as contained under section 271C, it is noticed that any person who fails to deduct tax at source, shall be liable to pay by way of penalty a sum equal to the amount of tax which he has failed to deduct. However, imposition of penalty under section 271C is subject to the

condition imposed under section 273B. A reading of section 273B of the Act suggests that where the assessee proves that the failure to deduct tax was for a reasonable cause, no penalty can be imposed. Therefore, from the conjoint reading of section 271C and 273B, it is clearly evident that imposition of penalty under section 271C is neither automatic nor mandatory. The authority concerned is empowered under section 273B not to impose penalty in a deserving case if he is satisfied that there was reasonable cause for failure to comply to statutory requirement. Therefore, confirmation of demand raised under section 201, cannot be the sole criteria for imposing penalty under section 271C. Keeping in view the aforesaid legal principles, it is to be examined whether there was reasonable cause for failure on the part of the assessee to deduct tax at source. On a perusal of the relevant facts on record, it is observed, the payment of U.S. \$ 77,500 was made to a non-resident for development of website and other allied works. Therefore, question is whether such payment attracts deduction of tax under section 195. As is evident, assessee's C.A., had issued a certificate opining that tax was not required to be deducted at source on said remittances as payment was made to a non-resident having no P.E. in India that too, for services rendered outside India. It is a well accepted fact that every citizen of the country is neither fully aware of nor is expected to know the technicalities of the Income Tax Act. Therefore, for discharging their statutory duties and obligations, they take assistance and advise of professionals who are well acquainted with the statutory provisions. In the present case also, assessee has engaged a chartered accountant to guide her in complying to statutory requirements. Therefore, when the C.A. issued a certificate opining that there is no requirement for deduction of tax at source, assessee under a bonafide belief that withholding of tax is not required did not deduct tax at source on the remittances made. Though, this fact was brought to the notice of the Departmental Authorities in course of the penalty proceedings but due weightage has not been given to such contention of the assessee. In our view, the explanation submitted by the assessee is a valid explanation and cannot be brushed aside with some general observations. Only because the assessee before the Tribunal had accepted her liability for deduction of tax at source, cannot be the sole basis for imposition of penalty completely ignoring the primary and fundamental reason shown by the assessee for failure to deduct such tax. Proceedings under sections 201 and 271C, are two independent and separate proceedings. While imposing penalty, the authority concerned is duty bound to examine assessee's explanation to find out whether there was reasonable cause for failure to deduct tax at source. As is evident, the assessee being advised by a professional well acquainted with provisions of the Act had not deducted tax at source. No malafide intention can be imputed to the assessee for failure to deduct tax. More so, when the issue whether tax was required to be deducted at source, on payments to a non-resident for services rendered is a complex and debatable issue requiring interpretation of statutory provisions vis-a-vis relevant DTAA between the countries. Therefore, in our considered opinion, failure on the part of the assessee to deduct tax at source was due to a reasonable cause. Accordingly, we delete the penalty imposed under section 271C is deleted.