

No prosecution proceedings if assessee failed to deposit TDS in time but submitted in along with interest later on

Summary – The High Court of Patna in a recent case of Sonali Autos (P.) Ltd., (the Assessee) held that If assessee deducted TDS but same was not deposited within specified time due to oversight on part of its accountant, prosecution proceedings against assessee after three years would be contrary to CBDT instruction and, thus, deserved to be quashed

Facts

- The petitioner in the relevant year 2009-10 made certain payments on various dates, towards interest (other than 'interest on securities') and commission and while crediting the said sums, duly deducted tax at source under sections 194A and 194H respectively. The aforesaid tax could not be deposited within due date due to oversight on the part of the Accountant. The mistake was noticed at the time of audit of books of account by the Statutory Auditors. The petitioner so paid a sum thereafter paid aforesaid sum. Owing to the delay in payment, the petitioner while paying the said sum also deposited interest amounting to as required under section 201(1A).
- Prosecution had been launched against the petitioner on the basis of complaint filed by the department alleging therein that TDS return filed by the petitioner has had not been deposited in time to the credit of Central Government relevant year. Thus, there was delay of 481 days without any reasonable cause.
- The Commissioner accorded sanction under section 279(1) for launching prosecution for the offence committed by the petitioner under section 276B.
- The Special Judge, on the basis of the aforesaid complaint filed by the complainant took cognizance against the petitioner and its three Directors for the offence under section 276B.
- On writ to the High Court, the petitioner contended that the instant prosecution was mechanical and contrary to the instructions issued by the CBDT and was wholly unsustainable in law. Oversight on the part of the Accountant could not be termed as anything but a reasonable cause and such defaults are often committed in due course of business Department contended that by making payment of TDS amount along with interest will not exonerate the petitioner from the liability of section 276B.

Held

- The petitioner deducted tax at source at the rate of Rs. 1,43,029 for the financial year 2009-10, but did not deposit the same with the Central Government within the specified time limit. Subsequently, out of total amount of Rs. 1,43,029 so deducted under sections 194A and 194H, the petitioner paid a sum of Rs. 41,029 on 07.09.2010 and, thereafter paid a sum of Rs. 1,02,000 on 20.09.2010. The

petitioner also deposited interest of Rs. 23,595 as required under section 201(1A) owing to the delay in payment of the aforesaid amount.

- The instructions issued by the CBDT dated 28-5-1980 wherein, it is mentioned that prosecution under section 276B should not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the government. No such consideration will, of course, apply to levy of interest under section 201 (1A).
- In the instant case, the petitioner has deposited the amount of Rs. 1,43,029 along with interest of Rs. 23,595 on various dates in the year 2010. Allegation against the petitioner is that the petitioner did not deposit amount of Rs. 1,43,029 duly deducted at source for the financial year 2009-10 within specified time with the Central Government, but the aforesaid amount has been deposited by the petitioner along with interest on various dates in the year 2010 when the mistake was noticed by the petitioner at the time of audit of Books of Account in 2010. Prosecution has been launched against the petitioner after the lapse of three years on 14.05.2013 as a consequence of sanction order passed under section 279(1) on 31-3-2013, in contravention of the instructions dated 28.05.1980 issued by the CBDT.
- Section 278AA specifically says that no person shall be punished for any failure referred to under the said provisions, if the assessee proves that there was reasonable cause for such failure. Reasonable cause would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of *bona fides*.
- Oversight on the part of the Accountant, who was appointed to deal with Accounts and Income-tax matters, can be presumed to be a reasonable cause for not depositing the tax within time. The petitioner immediately after noticing the aforesaid defects by the Statutory Auditors of the petitioner-company deposited the amount of Rs. 1,43,029 along with interest amounting to Rs. 23,595 as required under section 201(1A) in the year 2010 itself. Instant prosecution has been launched against the petitioner on 14-5-2013 after lapse of about three years from the date of deposit of due tax along with interest by the petitioner under section 201(1A), which is contrary to the instructions issued by CBDT.
- The order dated 15-5-2013 passed by the Special Judge, Economic Offences, Patna, taking cognizance of the offence under section 276B, along with entire criminal proceeding against the petitioner is hereby quashed.