

HC upheld penalty as assessee failed to prove that there was reasonable cause for not deducting TDS

Summary – The High Court of Kerala in a recent case of Muthoot Bankers, (the Assessee) held that On failure of assessee firm to establish reasonable cause for not deducting tax at source on payments of interest made to sister concerns under section 194A, penalty was to be levied

Facts

- The assessee firm had not deducted tax at source as required under section 194A on the payments of interest it made to its sister concerns. Therefore, proceedings under section 271C were initiated and demand raised.
- The assessee had stated before the authority that non-deduction of tax was not deliberate and there was a *bona fide* omission on its part in not deducting tax. It was further contended that since the recipient sister concerns had already included the interest amount in their returns and paid tax thereon, there was no loss of revenue to the Government. Further, since similar penalties in respect of a sister concern had already been deleted by the Appellate Authority, it was contended that the penalty could not be imposed in the absence of a finding of a deliberate defiance of law or dishonest intent and in conscious disregard of the obligation.
- On appeal, the Appellate Authority found that the assessee committed default by not deducting TDS without any reasonable cause and hence, the order of the Assessing Officer was confirmed.
- On further appeal, the Tribunal set aside the orders imposing penalty and the appellate order confirming the same.
- On appeal by revenue to the High Court:

Held

- The issue raised has been held in favour of the revenue in *CIT v. Muthoot Bankers (Aryasala)* [2016] 71 taxmann.com 110/385 ITR 51 (Ker.). With respect to the contentions raised as regards the finding that contumacious conduct is necessary before a penalty can be imposed, the position has been clarified by the decision of the Apex Court in *UOI v. Dharamendra Textiles Processors* [2008] 306 ITR 277/174 Taxman 571. In the said judgment, the Apex Court held, relying on precedents that *mens rea* is not an essential element for imposing penalty for breach of civil obligations. Considering the nature of penalty under the scheme of the Act, it was held that the penalty leviable in cases of default or failure of statutory obligation or in other words for breach of civil obligation is not a criminal offence and there is no question of proof of intention or *mens rea* by the assessee for imposing penalty.
- In view of the clear language of section 271C, the assessee was liable to pay the penalty unless he could plead and prove that he was prevented from deducting the tax at source with reasonable

cause. In the absence of any such pleading of proof, the penalty under section 271C is liable to be imposed on the assessee.

- The order of the Tribunal cancelling the penalty imposed on the assessee is unsustainable. The appeal is allowed setting aside the order of the Tribunal and restoring the order of the appellate authority and the Assessing Authority.