

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 6TH DAY OF JUNE 2016/16TH JYAISHTA, 1938

ITA.No. 57 of 2007

AGAINST THE ORDER IN ITA 398/2002 of I.T.A.TRIBUNAL,COCHIN BENCH
DATED 28-10-2005

APPELLANT/APPELLANT: -

THE COMMISSIONER OF INCOME TAX,
THIRUVANANTHAPURAM.

BY ADVS.SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/RESPONDENT: -

M/S.MUTHOOT BANKERS (ARYASALA),
THIRUVANANTHAPURAM.

BY ADV. SRI.C.M.STEPHEN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
06-06-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURE :

- ANNEXURE A : TRUE COPY OF THE ORDER U/s 271C OF THE JOINT COMMISSIONER OF INCOME TAX DATED 28.09.2001.
- ANNEXURE B : TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) ITA No. 121T/2001-02 DATED 05.06.2002.
- ANNEXURE C : COPY OF THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL ITA No. 398/COCH/2002 DATED 28.10.2005.

RESPONDENT'S ANNEXURE : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

**ANTONY DOMINIC &
DAMA SESHADRI NAIDU, JJ.**

I.T. Appeal No. 57 of 2007

Dated this the 06th day of June, 2016

J U D G M E N T

Antony Dominic, J.

In this appeal, the Revenue is calling in question the order passed by the Income Tax Appellate Tribunal, Cochin Bench in ITA No. 398/2002 for the assessment year 1998-1999. By the said order, the Tribunal upheld the order passed by the Commissioner of Income Tax (Appeals), by which the Commissioner cancelled the penalty levied under Section 271C of the Income Tax Act. It is in this background, this appeal is filed with the following questions of law:

- “1. Whether, on the facts and in the circumstances of the case the Tribunal is right in law and fact in upholding the cancellation of penalty order by the Commissioner of Income Tax (Appeals).
2. Whether, on the facts and in the circumstances of the case,
 - i) did the assessee discharge the burden of proof that lay on it.
 - ii) did the assessee prove that there was reasonable cause for the failure to deduct tax at source?
3. Whether, on the facts and in the circumstances of

the case, while considering the cause or causes for the "reasonable cause" under sec 273B should not the Tribunal have confined to the causes urged/repeated before the assessing officer/Commissioner of Income Tax (Appeals) and is not consideration of new reasons and sustaining the order of CIT(A) on new reasons without jurisdiction, illegal and vitiated?

4. Whether, on the facts and in the circumstances of the case, are not the reasons urged (para 4 of the order of the Tribunal) in support of 'reasonable cause' under Section 273B and considered and relied on by the CIT (A) militating against each other and hence both being non-existing, baseless, untenable, the Tribunal is justified in confirming the order of the CIT(A)?

5. Whether, on the facts and in the circumstances of the case

i) is not the order of the Tribunal against law and facts and also against principle laid down the judgment of the Delhi High Court (253 ITR 745)?

ii) the Tribunal is justified in confirming the order of the CIT(A)?

iii) the Tribunal is right in law in interfering with the order of the Joint Commissioner?"

2. On 03.06.2016, we heard the senior counsel for the revenue. On account of absence of the counsel for the assessee, the case was adjourned to 06.06.2016, when also the counsel for the assessee was absent. Therefore, we proceed to dispose of the

appeal on merits.

3. The assessee is a firm engaged in money lending. From the audit report concerning the assessment year in question, it was found that the assessee 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. In the reply filed, the assessee admitted its lapse and requested that a lenient view should be taken for the technical lapse. However, by Annexure A order, penalty of Rs.10,45,000/-under Section 271C was levied. This was cancelled by the Commissioner of Income Tax (Appeals) by Annexure B order where he concluded thus:

“Since the Assessing Officer has not established the absence of reasonable cause in this case, I am of the view that the penalty cannot be sustained legally. Considering all these aspects, I am of the view that the appellant's case deserves a lenient treatment in respect of the bonafide mistake committed by it. The penalty levied u/s 271C is accordingly cancelled.”

4. It was this order which was confirmed by the Tribunal.

5. Having heard the Senior Counsel for the revenue and also going through the orders passed by the statutory authorities, we find that it was the admitted case of the assessee that they

did not deduct tax at source as required by them under Section 194A. When there is a failure on the part of the assessee to deduct tax at source in violation of Section 194A, the penal provisions of Section 271C are attracted. In such a case, the only way out for the assessee is to take the benefit of Section 273B by establishing that there was reasonable cause justifying their failure to comply with Section 194A.

Referring to various precedents this Court had occasion to deal with a similar case in the judgment in ITA 139/2013 where it was held that the burden under Section 273B is entirely on with the assessee and that a case which is beyond the control of the assessee and which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides, alone make out a reasonable cause. In this case, Annexure A order of the Joint Commissioner shows that the assessee failed to produce any evidence to substantiate its claims. However, the Commissioner (Appeals) decided the issue by putting the burden on the revenue, which is evident from the extracted portion of the Annexure B order passed by the Commissioner. The order of the Tribunal shows that the Tribunal has given totally different reasons which are

mere surmises and assumptions made by it and are not founded on any materials that were made available by the assessee. All this therefore show that the assessee had not established a reasonable cause, as contemplated in Section 273B to resist an order of penalty under Section 271C. Therefore, we find that the Commissioner (Appeals) and the Tribunal acted illegally in cancelling the penalty levied on the assessee. Therefore, answering the question of law in favour of the revenue, this appeal is disposed of.

ANTONY DOMINIC, JUDGE

DAMA SESHADRI NAIDU, JUDGE

DMR/-