



TT Alert

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No penalty under S.271C of Income Tax Act for delay in remittance of TDS.

Hon'ble Supreme Court in its recent ruling¹ held that the provisions of S. 271C of the Income tax Act, 1961 ('ITA') will not be applicable when there is delay in remittance of the TDS which is already deducted by the assessee

Background

- M/s. US Technologies International Pvt. Ltd. (the 'Company') is engaged in software development business and has deducted TDS in respect of salaries, contract payments, etc. In March, the Company remitted part of the TDS and balance was remitted later. Thus, the period of delay ranged from 5 days to 10 months.
- The Survey was conducted on the Company premises, and it was found that there was delay in remittance of the TDS and the Income tax Officer levied interest under S. 201(1A) on the Company for the period of delay in remittance of TDS.
- Further, the Additional Commissioner of Income Tax ('Ad. CIT') issued a show cause notice and imposed penalty under S. 271C of amount equal to TDS.
- The order passed by Ad. CIT was confirmed by the High Court. Aggrieved by the order of the High Court the Company filed an appeal to the Supreme Court.

Supreme Court Decision

Hon'ble Supreme after examining the facts and representation from both the Company and the revenue held as under:

- The language used in S. 271C(1)(a) is precise, specifically using the phrase 'fails to deduct.' This terminology does not encompass the delayed remittance of TDS and therefore S. 271C(1)(a) only applies to situations where the taxpayer fails to deduct the whole or a part of TDS.
- Further, as per the cardinal principle of interpretation of statute, the penal provision is to read as they are, nothing is to be added or nothing is to be taken out of the penal provision and hence the words used under S. 271C are 'fails to deduct the whole or any part of tax' and not 'fails to deduct and remitted belatedly'.
- It is worth noting that in cases where the Parliament intended to establish the repercussions of non-payment and / or belated remittance of TDS, it has included provisions such as S. 201(1A) and S. 276B.
- As per S. 201(1A) the interest is levied on non-payment and / or belated remittance of TDS and further S. 276B provides for the prosecution on non-payment of TDS after deduction of the same.
- Regarding the reference to Circular no. 551 dated 23.01.1998 relied by the revenue, the Supreme Court ruled that the circular prescribes for interest under S. 201(1A) and prosecution under S.276B for delay in remittance of TDS and even the CBDT has acknowledged that no penalty will be levied under S. 271C.
- Based on the above discussion the Supreme dismissed the appeal in favor of the Company and set-aside the judgement passed by the High court.

Key Takeaways

The recent ruling by the Apex court provides clarity on tax disputes arising from the late deposit of TDS by taxpayers who have no malafide intention for the late deposit. This decision also offers relief to such taxpayers and further clarifies the applicability of S. 271C of the ITA.

¹ Civil Appeal No. 7934 of 2011 in the case of M/s US Technologies International (P.) Ltd. v. CIT

Cases referred in the decision of the Supreme Court:

- Lakshadweep Development Corporation Ltd. vs. Ad. CIT (TDS) and Anr. (2019) 411 ITR 213 (FB)
- CIT vs. Bank of Nova Scotia (2016) 15 SCC 81

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