
(2014) 02 AHC CK 0093
In the Allahabad High Court
Case No : IT Appeal No. 39 of 2014

Commissioner of Income Tax	Vs	APPELLANT
G.M. (Telecom), BSNL		RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 194H, 201(1A), 271C, 273B

Citation : (2014) 267 CTR 531

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : Dhananjay Awasthi, Advocate for the Respondent

Judgement

1. This appeal by the Revenue is from a judgment of the Tribunal dt. 8th Aug., 2013 insofar as the Tribunal has confirmed the deletion of a penalty that was imposed under s. 271C of the IT Act, 1961 (hereinafter referred to as the "Act") on the ground that reasonable cause had been shown by the assessee within the meaning of s. 273B of the Act. The Revenue has raised the following questions of law:

(1) Whether the Tribunal erred in law in deleting the penalty on the basis of a corporate letter dt. 13th Dec, 2007 while ignoring the language and provisions of s. 271C ?

(2) Whether the Tribunal erred in law in invoking the provisions of s. 273B when the quality of material provided by the assessee was not of such value so as to bind the tax authorities, s. 273B uses the word "reasonable cause" which means the quality of explanation being given by the assessee must be one which can bind the tax authorities in not to levy the penalty and not any general material or cause as was provided in this case ?

(3) Whether the Tribunal was correct in dismissing the appeal of the Department by holding that the assessee had a legal basis to believe that no TDS need to be made in the case on hand without considering the fact that the assessee was

under legal obligation to deduct the tax from the discount/commission paid to franchisee owners as provided under s. 194H of the IT Act?

2. In the present case, there was a short deduction of TDS on account of the payment of trade discount/commission to franchisees and customers of the assessee on the sale of recharge prepaid vouchers and SIM cards. The AO levied a penalty under s. 271C of the Act apart from directing recovery of TDS and interest under s. 201(1A) of the Act in respect of recharge prepaid vouchers and SIM cards. The CIT(A) held that there was a decision of the Tribunal in (2010) 123 ITD 620 in which it was held that the payment made to primary market agents (PMA) was not a commission or brokerage and was not liable to TDS and even if the liability to pay TDS was fixed on the assessee, the imposition of penalty was not warranted. The CIT(A) also relied upon a communication dt. 13th Dec, 2007 of the corporate office of the assessee. In deleting the penalty, the CIT(A) adverted to the judgment of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, which lays down a well-settled principle that a penalty will not be imposed merely because it is lawful to do so and the imposition of the penalty lies in the discretion of the authority concerned. The Tribunal has affirmed the view of the CIT(A).

3. Learned counsel appearing for the Revenue submits that ignorance of law is no excuse. He relies on a judgment of the Karnataka High Court in Commissioner of Income Tax and Another Vs. S.C. Naregal . Moreover, it has been submitted that the issue as to whether the tax was liable to be deducted at source under s. 194H of the Act has been concluded in a judgment of the Calcutta High Court in Bharti Cellular Ltd. Vs. Assistant Commissioner of Income Tax, in which it has been held that receipt of discount by a franchisee was, in real sense, a commission paid to the franchisee and would attract s. 194H. Learned counsel also placed reliance on a judgment of the Supreme Court in Price Waterhouse Coopers Pvt. Ltd. Vs. Commissioner of Income Tax, Kolkata-I, wherein the Supreme Court held that where the assessee had, through a bona fide and inadvertent error while submitting its return, failed to add the gratuity to its total income, the imposition of a penalty was not warranted.

4. There can be no dispute about the fundamental principle of law that ignorance of law is no excuse. Sec. 273B of the Act, however, stipulates that notwithstanding anything contained, in s. 271C, no penalty shall be imposed on a person or assessee for any failure to deduct tax at source, if it is proved that there was a reasonable cause for such failure. That the assessee was liable to deduct tax at source is beyond dispute. The only issue is as to whether reasonable cause for a failure to deduct tax at source under s. 194H had been shown. The CIT(A) has exercised his discretion particularly having regard to the fact that at the relevant time, there was a decision in Idea Cellular Ltd. (supra) and in view whereof the assessee was under a bona fide belief that tax was not liable to be deducted on commission/trade discount. This is, at least, a possible view to take and which has been sustained by the Tribunal. In fact, it must be

emphasised that the Tribunal has not laid down the proposition that ignorance of law can furnish an excuse for non-deduction of tax at source and the learned counsel is right in saying that this proposition would be unsustainable. However, this is a case where, on a review of facts, it was found that a reasonable cause had been shown under s. 273B. Hence, the imposition of penalty which was deleted by the CIT(A) has been affirmed by the Tribunal. The appeal filed by the Revenue, in these circumstances, will not give rise to any substantial question of law. It is, accordingly, dismissed.