

(2006) 06 MAD CK 0059

In the Madras High Court

Case No : T.C. (A) . No"s. 1153 to 1155 of 2006 and T.C.M.P. No"s. 1604 and 1605 of 2006

The Commissioner of Income Tax

APPELLANT

Vs

Data Software Research Co. P. Ltd.

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Companies Act, 1956 — Section 227(3)

Income Tax Act, 1961 — Section 271, 271A, 271AA, 271B, 271BA

Citation : (2007) 212 CTR 323 : (2007) 288 ITR 289

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : J. Narayanaswamy, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeals are directed against the common order of the Income Tax Appellate Tribunal in I.T.A.

Nos. 1476, 1477 and 1493/Mds/2000 dated 15.6.2005.

2. The Revenue is the appellant. The above appeals relate to assessment years 1996-97, 1997-98 and 1998-99 respectively. According to the

assessee, the tax audit reports for the relevant assessment years were filed in time along with necessary forms. But, the assessing officer finding that

there was no tax audit reports enclosed with the necessary forms and further, finding from the tax returns, which were filed much later, i.e. only on

that the audit reports were prepared only on 28.2.97 for the year ending 31.3.1996, 28.2.98 for the year ending 31.3.1997 and 25.2.1999 for the

year ending 28.2.98, concluded that the tax audit reports had been reduced to a ""ritualistic exercise"" and accordingly, by proceedings dated

24.1.2000, levied penalty u/s 271B of the Income Tax Act.

3. In response to the said proceedings, the assessee offered its explanation, which is summarised as follows:

... that tax audit for the relevant assessment years were filed well within the time; that while the audit report should cover the accounts of any

branch office as per Section 227(3)(bb) of the Companies Act, though the accounts of the branch officer at USA were received in time, the

relevant audit reports were not received in time; that having finished the audit with the information received from the branch, the report was made

ready as of 30.8.96 and 97; that since the audit reports were not received before the said dates, it necessitated the audited accounts to be

considered on a later date; that the first date on which the accounts were to be approved by the Board was inadvertently mentioned, which do not

cause any loss to the Revenue; that except inclusion of a sentence, there were no other changes in the audit report; and hence, pleaded that the

matter to be reconsidered.

Accordingly, the assessee pointed out that the first audit reports, which were filed, were not carrying the audit report of the branch at USA and

therefore, the completed audit report was filed later.

4. However, not satisfying with the above explanation offered by the assessee, the assessing officer imposed penalty to the tune of Rs. 1 lakh u/s

271B of the Act, which was also confirmed by the Commissioner of Income Tax (Appeals) by order dated 3.6.2000. On appeal by the assessee,

the same was reversed by the Income Tax Appellate Tribunal by order dated 15.6.2005, which is being challenged in the present appeals by the

Revenue raising the following substantial question of law:

Whether in the facts and circumstances of the case, the Tribunal was right in deleting the penalty u/s 271B ?

5.1. To decide the above question of law, it is apt to refer Section 271B of the Act, which reads as follows:

271B. Failure to get accounts audited.

If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such

audit as required u/s 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to one-half per cent of the

total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of one hundred thousand rupees, whichever is less.

5.2. While Section 271B of the Act empowers the assessing officer to impose penalty for the failure to get the accounts audited, cases where penalty need not be imposed are governed by Section 273B of the Act, which reads as follows:

273B. Penalty not to be imposed in certain cases.

Notwithstanding anything contained in the provisions of Clause (b) of Sub-section (1) of Section 271, Section 271A, Section 271AA, Section 271B, Section 271BA, Section 271BB, Section 271C, Section 271D, Section 271E, Section 271F, Section 271FA, Section 271G, Clause (c)

or Clause (d) of Sub-section (1) or Sub-section (2) of Section 272A, Sub-section (1) of Section 272AA or Section 272B or Sub-section (1) of

Section 272BB or Sub-section (1) of Section 272BBB or Clause (b) of Sub-section (1) or Clause (b) or Clause (c) of Sub-section (2) of Section

273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves

that there was reasonable cause for the said failure.

6. Mr. J. Narayanaswamy, learned Counsel appearing for the appellant/Revenue vehemently contended that under the facts and circumstances of

the case, the explanation offered by the assessee is not a reasonable cause for not imposing penalty.

7. But, we are unable to appreciate the same. In the instant case, the assessee has clearly explained that he could not get the audit reports from its

branch office at USA and therefore, they could not file the audit report in time. It is, therefore, to be seen whether there is any lack of bona fide on

the part of the assessee for the delay in filing the audit reports, as they were not available in their hands or they committed any deliberate or wanton

default in this regard. It is only to appreciate such facts and circumstances, the legislatures have been enunciated to enable the assessee to put forth

their explanation for such a delay in filing the audit reports. Unless any deliberate or mala fide intention could be seen for the delay in filing the audit

report, the explanation offered by the assessee cannot be arbitrarily rejected.

8. The principle of reasonableness has become one of the most important and

active proposition in the administrative law. It is often used in the legal system with nick names, such as Wednesbury's Principle, Wednesbury's Reasonableness, Wednesbury's Unreasonableness, Wednesbury's Grounds, Wednesbury's Case, Wednesbury's Sense - a current legal Jargon. Thus, "Wednesbury's Principle" is now a common and convenient label indicating special standard of reasonableness or special standard of unreasonableness, which has now become a criterion for judicial review of administrative discretion. The test is fundamentally based on rationality/irrationality. Virtually, the rationality in the positive sense or irrationality in the negative sense are tested in the light of intelligible reasons. But the question then is whether such intelligible reasons measure up to the legal standard of reasonableness. Of course, if such reasons are frivolous or fictitious, they are liable to be rejected as unreasonable or irrational. In other words, the relevancy of the reasons shall be the bed-rock of the consideration. Once the relevancy of the reason is satisfied, such reason shall stand to the test of reasonableness. Alternatively, if the reasons do not stand to the test of relevancy, as the same is frivolous, fictitious and extraneous, then such reasons do not stand to the test of reasonableness and therefore, held to be unreasonable. While testing the reasonableness, the Court should not usurp the role of the authorities and it should resist the temptation to draw the bounds too tightly according to its own opinion and therefore, must aim to apply the objective standard for testing the reasonableness with the measure of relevancy and this is the essence of Wednesbury's Reasonableness/ Wednesbury's Unreasonableness. The following are some of the references, where the words "reasonable" and "reasonable cause" have been explained by Courts in India.

9.1. In *Azadi Bachao Andolan Vs. Union of India*, , it is explained that reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.

9.2. In *Woodward Governors India (P.) Ltd. v. CIT* (2001) 118 Taxman 433, it is held that "Reasonable Cause" as applied to human action is

that which would constrain a person of average intelligence and ordinary prudence. It can be described as a probable cause. It means an honest

belief founded upon reasonable grounds, of the existence of a state of

circumstances, which, assuming them to be true, would reasonably lead any ordinary prudent and cautious man, placed in the position of the person concerned, to come to the conclusion that the same was the right thing to do.

9.3. Similarly, in *Kalakrithi Vs. ITO and Another*, , this Court had an occasion to consider the word "reasonable cause" contained in Section

273B of the Act, which reads as follows:

The words ""reasonable cause"" in Section 273B of the Income Tax Act, 1961, must necessarily have a relation to the failure on the part of the

assessee to comply with the requirement of the law which he had failed to comply with. In the case of delay in compliance, the cause shown must

be for the whole of the period of the delay and not merely for a part thereof. If the cause shown is such as to explain the delay as a whole and

constitute a good reason for the non-compliance, no penalty would be leviable. However, in cases where the cause shown is such as to explain a

part of the delay, or the cause shown is only to mitigate the gravity of the non-compliance, such a case cannot be extrapolated and treated as being

good cause for the whole of the period of the delay in its entirety.

9.4. The Apex Court in *Collector and Others Vs. P. Mangamma and Others*, , while interpreting the word ""reasonable"" has observed as follows:

It would be hard to give an exact definition of the word ""reasonable"". Reason varies in its conclusions according to the idiosyncrasy of the individual

and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic stands now like the jingling of a child's

toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the decision of the Judge usually

determines what is ""reasonable"" in each particular case; but frequently reasonableness, ""belongs to the knowledge of the law, and therefore, to be

decided by the courts"". An attempt to give a specific meaning to the word ""reasonable"" is trying to count what is not a number and measure what is

not space. It means prima facie in law reasonable in regard to those circumstances of which the actor, called upon to act reasonably, knows or

ought to know. It is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established

before you can ascertain what is reasonable under the circumstances.

10. Keeping the above principles in mind, we find that in the instant case, the explanation offered by the assessee is that they could not file the audit

reports, as they had not received the audit reports from its branch office at USA. This shows that they did not have the audit reports in their hand

and therefore, the question of deliberate or mala fide intention on their part does not arise and as a result, their explanation has to be accepted as

bona fide, particularly, the reason for the delay is non-completion of the audited accounts in the branch office at USA for the entire period of delay.

Once the explanation appears to be bona fide, the same satisfies the test of reasonableness. Consequently, the cause for the delay being

reasonable, the Revenue cannot reject the same and impose penalty, as the same is still protected u/s 273B of the Act and more particularly, when

such a delay has not reflected any loss to the revenue, as it is nothing but technical in nature.

11. Hence, finding no question of law arising for consideration, these tax case appeals are dismissed. Consequently, connected T.C.M.Ps. are also dismissed.