



Tax alert: Penalty not applicable for delayed remittance of TDS

7 June 2023

The Supreme Court has rendered its decision that there shall not be any penalty leviable under section 271C of the Income-tax Act, 1961 (ITA) on mere delay in remittance of tax after deduction of the same by the concerned taxpayer. The consequences on non-payment/delayed remittance of the TDS would be under section 201(1A) and section 276B of the ITA.

In a nutshell



Section 271C(1)(a) of the Income-tax Act, 1961 (ITA) is applicable in case of a failure on the part of the taxpayer to **'deduct'** the whole or any part of the tax as required by or under the provisions of Chapter XVIIIB.



As per the settled position on law, the penal provisions are required to be construed strictly and literally. Nothing is to be added or nothing is to be taken out of the penal provisions.



The words "fails to deduct" occurring in section 271C(1)(a) cannot be read into "failure to deposit/pay the tax deducted".



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Background:

- The taxpayer¹ is a company engaged in a software development business.
- During the relevant year(s) under consideration, the taxpayer deducted tax at source (TDS) in respect of salaries, contract payments, etc. However, there was a delay in remittance taxpayer of the TDS with the government.
- In the course of survey proceedings, the Revenue noted that the TDS was not deposited within the prescribed dates under Income-tax Rules, 1962. Accordingly, the Revenue levied:
 - Interest under section 201(1A) [relating to consequences of failure to deduct or pay] of the Income-tax Act, 1961 (ITA) for the period of delay in remittance of TDS.
 - Penalty under section 271C [relating to penalty for failure to deduct tax at source] of the ITA, equivalent to the amount of TDS remitted belatedly.
- Aggrieved by the levy of penalty under section 271C of the ITA, the taxpayer filed an appeal and in the course of appellate proceedings the matter reached before the Supreme Court (SC).

Relevant provisions in brief:

Relevant extract of section 271C of the ITA:

“(1) If any person fails to—

- (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
- (b) pay or ensure payment of, the whole or any part of the tax as required by or under—
 - (i) sub-section (2) of section 115-O;
 - (ii) the proviso to section 194B;
 - ²(iii) the first proviso to sub-section (1) of section 194R;
 - ²(iv) the proviso to sub-section (1) of section 194S;
 - ²(v) sub-section (2) of section 194BA,

... then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.”

Relevant extract of section 201(1A) of the ITA:

“(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest...”

Relevant extract of section 276B of the ITA

“If a person fails to pay to the credit of the Central Government,—

- (a) the tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or
- (b) the tax payable by him, as required by or under—
 - (i) sub-section (2) of section 115-O; or
 - (ii) the proviso to section 194B,

¹ US Technologies International Pvt. Ltd. & Others vs. CIT [2023] 149 taxmann.com 144 (SC)

² Inserted by Finance Act, 2023

he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.”

Decision of the SC:

The SC noted /observed the following:

- The questions posed for consideration before the SC were:
 - In case of belated remittance of the TDS after deducting the TDS, would the taxpayer be liable to pay penalty under section 271C of the ITA?
 - What is the meaning and scope of the words ‘fails to deduct’ occurring in section 271C(1)(a) of the ITA and whether the taxpayer, who caused delay in remittance of TDS deducted, could be said to be a person who ‘fails to deduct TDS’?

Interpretation of section 271C of the ITA

- As per section 271C(1)(a) of the ITA, if any person **fails to deduct** the whole or any part of the tax as required by or under the provisions of Chapter XVIIIB [relating to deduction at source] then such a person shall be liable to pay by way of penalty a sum equal to the amount of tax which such person failed to deduct or pay. So far as **failure to pay** the whole or any part of the tax was concerned, the same was with respect to section 271C(1)(b) of the ITA which was not the case under consideration.

Therefore, section 271C(1)(a) of the ITA was applicable in case of a failure on the part of the concerned person/taxpayer to “deduct” the whole or any part of the tax as required by or under the provisions of Chapter XVIIIB.

- The words used in section 271C(1)(a) were clear and the relevant words used are “fails to deduct.” It does not speak about belated remittance of the TDS. As per settled position of law, penal provisions are required to be construed strictly and literally. As per the cardinal principle of interpretation of statute and more particularly, the penal provisions are required to be read as they are. Nothing is to be added or nothing is to be taken out of the penal provision. Therefore, on plain reading of section 271C of the ITA, penalty shall not be levied on belated remittance of the TDS, after the same is deducted by the taxpayer.
- When the non-deduction of the whole or any part of the tax, as required by or under the various instances/provisions of Chapter XVIIIB would invite penalty under section 271C(1)(a); only a limited text, involving section 115O(2) or covered by the second proviso to section 194B alone would constitute an instance where penalty can be imposed in terms of section 271C(1)(b) of the ITA, namely, on non-payment.

Consequences of non-payment/belated payment of the TDS

- Wherever the Parliament wanted to have the consequences of non-payment and/or belated remittance/payment of the TDS, the Parliament/Legislature had provided the same as in section 201(1A) and section 276B [relating to prosecution for failure to pay TDS to the credit of Government] of the ITA.
- Section 201(1A) of the ITA provides that in case a tax has been deducted at source but the same is subsequently remitted may be belatedly or after some days, such a person is liable to pay the interest as provided under section 201(1A) of the ITA. The levy of interest under section 201(1A), thus, could be said to be compensatory in nature on belated remittance of the TDS after deducting the same. Therefore, consequences of non-payment/belated remittance/payment of the TDS were specifically provided under section 201(1A) of the ITA.
- Similarly, section 276B provides for prosecution in case of failure to ‘pay’ tax to the credit of Government.

CBDT Circular³ dealing with the circumstances under which section 271C was introduced

- As per the CBDT Circular No. 551 dated 23 January 1998:
 - If there was any delay in remitting TDS, it attracted payment of interest under section 201(1A) of the ITA and because of the gravity of the mischief involved, it may involve prosecution proceedings as well, under section 276B of the ITA.
 - If there was any omission to deduct TDS, it may lead to loss for Revenue and hence remedial measures had been provided by incorporating the provision to ensure that tax liability to the said extent stood shifted to the party who failed to effect deduction, in the form of penalty.

Conclusion

- The words '**fails to deduct**' occurring in section 271C(1)(a) of the ITA could not be read into '**failure to deposit/pay the tax deducted**'.
- Therefore, on true interpretation of section 271C of the ITA, penalty should not be any levied under section 271C of the ITA on mere delay in remittance of the TDS after deducting the same by the concerned taxpayer. The consequences on non-payment/belated remittance of the TDS would be under section 201(1A) and section 276B of the ITA.

In view of the above, the SC held that no penalty under section 271C of the ITA shall be levied on mere belated remitting of TDS after its deduction by the concerned person/ taxpayer.

Comments:

The SC in this ruling has held / upheld the following:

- Section 271C(1)(a) of the ITA is applicable in case of a failure on the part of the taxpayer to '**deduct**' the whole or any part of the tax as required by or under the provisions of Chapter XVIIIB.
- As per settled position on law, the penal provisions are required to be construed strictly and literally.
- The words "fails to deduct" occurring in section 271C(1)(a) cannot be read into "failure to deposit/pay the tax deducted".
- Penalty should not be levied under section 271C of the ITA on mere delay in remittance of the TDS after deducting the same by the concerned taxpayer.
- The consequences of non-payment/ belated remittance of the TDS have been provided under section 201(1A) and section 276B of the ITA.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.

³ CBDT Circular No. 551 dated 23.01.1998



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