REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 7934 of 2011

M/s US Technologies International Pvt. Ltd. ...Appellant(s)

Versus

The Commissioner of Income Tax ...Respondent(s)

With

Civil Appeal Nos. 1258-1260 of 2019

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment(s) and order(s) passed by the High Court of Kerala at Ernakulam in

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confirming the levy of interest/penalty under Section 271C of the Income Tax Act, 1961 (hereinafter referred to as the Act) on failure of the respective assessees to deposit the tax deducted at source (TDS) (or belated remittance of the TDS), the respective assessees have preferred the present appeals.

CIVIL APPEAL NO. 7934/2011

2. The facts leading the present appeal in a nutshell are as under: -

2.1 From 01.04.2002 to February, 2003, the appellant – assessee, engaged in a software development business at Techno Park, Trivandrum which employed about 700 employees, deducted tax at source (TDS) in respect of salaries, contract payments, etc., totalling Rs. 1,10,41,898/- for the

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assessment year (AY) 2003-04. In March, the assessee remitted part of the TDS being Rs. 38,94,687/- and balance of Rs. 71,47,211/- was remitted later. Thus, the period of delay ranged from 05 days to 10 months. On 10.03.2003, a survey was conducted by the Revenue at assessee's premises and it was noted that TDS was not deposited within the prescribed dates under Income Tax Rules (IT Rules). On 02.06.2003, Income Tax Officer (ITO) vide order under Section 201(1A) of the Act, 1961 levied penal interest of Rs. 4,97,920/- for the period of delay in remittance of TDS. On 09.10.2003, the Additional Commissioner of Income Tax issued a show cause notice proposing to levy penalty under Section 271C of the amount equal to TDS. That the assessee replied to the

said show cause notice vide reply dated 28.10.2003. That on 06.11.2003, another order under Section 201(1A) was passed levying the penal interest of Rs. 22,015/-. On 10.11.2003, the Additional Commissioner of Income Tax (ACIT) vide order under Section 271C levied a penalty of Rs. 1,10,41,898/- equivalent to the amount of TDS deducted for AY 2003-04. That order of Additional CIT levying the penalty under Section 271C came to be confirmed by the High Court by the impugned judgment and order. The High Court vide impugned judgment and order has dismissed the appeal preferred by the assessee by holding that failure to deduct/remit the TDS would attract penalty under Section 271C of the Act, 1961.

2.2 Feeling aggrieved and dissatisfied with the levy of interest/penalty under Section 271C of the Income Tax Act, 1961 on late remittance of TDS is the subject matter of preferred appeal(s).

CIVIL APPEAL NOS. 1258-1260/2019

3. The facts leading to the present appeals in a nutshell are under: -

3.1 By order(s) dated 26.09.2013, the ACIT by way of orders under Section 271C levied penalty equivalent to the amount of TDS deducted for AYs 2010-11, 2011-12 and 2012-13 on the ground that there was no good and sufficient reason for not levying penalty.

3.2 The CIT (Appeals) dismissed the assessees' appeals. By common order dated 01.06.2016,

the Income Tax Appellate Tribunal (ITAT) allowed the assessees' appeals by holding that imposition of penalty under Section 271C was unjustified and reasonable causes were established by the assessee for remitting the TDS belatedly. By the impugned common judgment and order the High Court has allowed the Revenue's appeals relying upon its earlier judgment (which is the subject matter of Civil Appeal No. 7934/2011 as above). The impugned judgment and order passed by the High Court is the subject matter of present appeals being Civil Appeals Nos. 1258-1260/2019.

4. Shri Arijit Prasad and Shri C.N. Sreekumar, learned Senior Advocates have appeared on behalf of the respective assessees and Shri Balbir Singh, learned ASG assisted by Ms.

Monica Benjamin, learned counsel has appeared on behalf of the Revenue.

5. Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the assessee in Civil Appeal No. 7934/2011 has vehemently submitted that in the facts and circumstances of the case, the levy of penalty under Section 271C of the Act, 1961 is not justifiable at all. It is submitted that in the facts and circumstances of the case there shall not be any penalty leviable under Section 271C of the Act, 1961.

5.1 It is further submitted by Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the assessee that here is the case of late remittance of the TDS and not a case of non-deduction of TDS at all. It is submitted that therefore, at the most, the assessee shall be

liable to pay the penal interest leviable under Section 201(1A) of the Act, 1961. It is submitted that however, there shall not be any levy of penalty under Section 271C of the Act, 1961 on mere late remittance of the TDS though deducted.

5.2 It is further submitted by Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the assessee that Section 271C would be applicable only in case of non-deduction of whole or any part of the tax [Section 271C(1)(a)]. It is submitted that Section 271C(1)(a) shall be applicable in case of non-deduction of whole or any part of the tax as required by or under the provisions of Chapter XVIIB. It is submitted that in the present case Section 271C(1)(b) shall not be applicable. It is submitted that therefore taking into

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consideration the words employed in Section 271C(1)(a), there shall be levy of penalty of a sum equal to the amount of tax in case of failure on the part of the concerned person who fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVIIB. It is submitted that in case of belated remittance of the TDS, there shall not be any levy of interest under Section 271C of the Act, 1961.

5.3 It is submitted that as per the cardinal principle of law, a penal provision is required to be construed strictly and literally and nothing is to be added in the Section and the penalty provisions are required to be read as they are.

5.4 It is submitted that so far as the belated remittance of the TDS is concerned, the

Statute provides for penal interest under Section 201(1A) of the Act, 1961. It is submitted that the penal interest levied under Section 201(1A) is compensatory in nature. It is submitted that therefore, when the Parliament thought it fit to levy the penal interest on late remittance of the TDS for the belated period, there shall not be any levy of the penalty under Section 271C for belated remittance of the TDS.

5.5 It is submitted that if the stand taken by the Revenue and the views taken by the High Court that even on belated remittance of the TDS there shall be penalty levied under Section 271C of the Act, is accepted, in that case it would tantamount to adding something more than which is not provided in the Section. It is submitted that words used

in Section 271C are "fails to deduct the whole or any part of the tax." It is submitted that it does not speak "fails to deduct and remitted belatedly."

5.6 Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the assessee has drawn our attention to Section 276B of the Act, 1961. It is submitted that as per Section 276B of the Act "**if a person fails to pay to the credit of the Central Government the tax deducted at source by him as required by or under the provisions of Chapter XVIIB, he shall be liable to be prosecuted and 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.**" It is

submitted that therefore, Section 276B talks about **"fails to pay,"** the words which are missing in Section 271C of the Act. It is submitted that therefore, wherever, the Parliament wanted to provide for the consequences on non-payment of the TDS, the same is provided like Section 276B of the Act. It is submitted that therefore, thus the words in Section 271C and Section 276B are different and distinct.

5.7 It is further submitted by Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the assessee that even otherwise, the impugned judgment and order passed by the High Court has been subsequently overruled by the Full Bench of the Kerala High Court in the case of **Lakshadweep Development**

Corporation Ltd. Vs. Additional Commissioner of Income Tax (TDS) and Anr. (2019) 411 ITR 213 (FB).

5.8 It is further submitted by learned counsel appearing on behalf of the respective assessees in respective appeals that even otherwise in exercise of powers under Section 273B, no penalty shall be imposed on the person or the assessee, for any failure, if he proves that there was a reasonable cause for the said failure. Reliance is placed on the decision of this Court in the case of **CIT Vs. Bank of Nova Scotia (2016) 15 SCC 81**.

5.9 It is submitted that in the case of Civil Appeals Nos. 1258-60/2019, the ITAT found in favour of the assessee that there was a reasonable cause for the assessee for the

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failure to remit the TDS belatedly. It is submitted that once the ITAT found the case falling under Section 273B, the same was not required to be interfered with by the High Court as the same cannot be said to a substantial question of law.

5.10 Making the above submissions, it is prayed to allow the present appeals and to hold that for late remittance of the TDS, there shall not be any penalty leviable under Section 271C of the Act, 1961.

6. All these appeals are vehemently opposed by Shri Balbir Singh, learned ASG assisted by Ms. Monica Benjamin, learned counsel, appearing on behalf of the Revenue.

6.1 Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has vehemently submitted that Section 271C of the Act has

been inserted in the year 1987. It is submitted that the object and purpose of inserting Section 271C is to levy the penalty for failure to deduct tax at source. It is submitted that under the old provision of Chapter XXI of the Income Tax Act, no penalty was provided for failure to deduct tax at source though, this default, however, attracted prosecution under the provisions of Section 276B, which prescribed punishment for failure to deduct tax at source or after deducting failure to remit the same to the Government and therefore, Section 271C came to be inserted to provide for levy of penalty for failure to deduct tax at source. It is submitted that therefore, in a case where though the assessee has deducted the tax (TDS), but does not remit the same to the

Government and/or belatedly remits the TDS after deducting, such an assessee is liable to pay the penalty under Section 271C of the Act.

6.2 It is submitted that any other view will frustrate the object and purpose of insertion of Section 271C of the Act. Then, Shri Balbir Singh, learned ASG has taken us to the CBDT Circular No. 551 dated 23.01.1998, explaining the amendment and insertion of Section 271C. It is submitted that the object and purpose of insertion of Section 271C seems to be that over and above the prosecution, the person who has deducted tax at source but not remitted the same to the Government shall also be liable to pay penalty and that is why Section 271C has been inserted.

6.3 Making the above submissions, it is prayed to dismiss the present appeals.

7. Heard learned counsel appearing on behalf of the respective parties at length.

7.1 The short question which is posed for the consideration of this Court is in case of belated remittance of the TDS after deducting the TDS whether such an assessee is liable to pay penalty under Section 271C of the Act, 1961?

7.2 The question which is also posed for the consideration of this Court is what is the meaning and scope of the words "fails to deduct" occurring in Section 271C(1)(a) and whether an assessee who caused delay in remittance of TDS deducted by him, can be said a person who "fails to deduct TDS"?

7.3 In order to appreciate the rival contentions and to answer the aforesaid questions, it is necessary to have analysis of Statutory provisions.

7.4 The relevant provisions are as under: -

> **"Section 201(1A) of the Act**
> 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, —
> (*i*) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and
> (*ii*) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of Section 200:]
>
> **Section 271C of the Act**
> 271-C. Penalty for failure to deduct tax at source. (1) If any person fails to—

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(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or
(b) pay the whole or any part of the tax as required by or under,—
(i) sub-section (2) of Section 115-O; or
(ii) the second proviso to Section 194-B;
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.]
(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

Section 273B of the Act

273-B. 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 271-A 4203[Section 271-AA], Section 271-B 4204[Section 271-BA], 4205[Section 271-BB, 4206[Section 271-C, Section 271-CA], Section 271-D, Section 271-E, 4207[Section 271-F,] 4208[Section 271-FA 4209[, 4210[Section 271-FAB, Section 271-FB, Section 271-G, Section 271-GA, 4211[Section 271-GB,]]] 4212[Section 271-H,] 4213[Section 271-I,] 4214[Section 271-J,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of Section 272-A, sub-section (1) of Section 272-AA] or 4215[Section 272-B or] 4216[sub-section (1) or sub-section (1-A) of Section 272-BB] or sub-section (1) of Section 272-BBB 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.

Section 276B of the Act

276-B. Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.—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 second proviso to Section 194-B,

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."

7.5 At the outset, it is required to be noted that all these cases are with respect to the belated remittance of the TDS though deducted by the assessee and therefore, Section 271C(1)(a) shall be applicable. At the cost of repetition, it is observed that it is a case of belated

remittance of the TDS though deducted by the assessee and not a case of non-deduction of TDS at all.

7.6 As per Section 271C(1)(a), if any person fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVIIB 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 as aforesaid. So far as failure to pay the whole or any part of the tax is concerned, the same would be with respect to Section 271C(1)(b) which is not the case here. Therefore, Section 271C(1)(a) shall be applicable in case of a failure on the part of the concerned person/assessee to **"deduct"** the whole of any part of the tax as required by

or under the provisions of Chapter XVIIB. The words used in Section 271C(1)(a) are very 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, the penal provisions are required to be construed strictly and literally. As per the cardinal principle of interpretation of statute and more particularly, the penal provision, 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 Act, 1961, there shall not be penalty leviable on belated remittance of the TDS after the same is deducted by the assessee. Section 271C of the Income Tax Act is quite categoric. Its scope and extent of application

is discernible from the provision itself, in unambiguous terms. When the non-deduction of the whole or any part of the tax, as required by or under the various instances/provisions of Chapter XVIIB would invite penalty under Clause 271C(1)(a); only a limited text, involving sub-section (2) of Section 115O 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 Act, namely, on non-payment. It is not for the Court to read something more into it, contrary to the intent and legislative wisdom.

7.7 At this stage, it is required to be noted that wherever the Parliament wanted to have the consequences of non-payment and/or belated remittance/payment of the TDS, the

Parliament/Legislature has provided the same like in Section 201(1A) and Section 276B of the Act.

7.8 Section 201(1A) 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 Act. The levy of interest under Section 201(1A) thus can 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 are specifically provided under Section 201(1A).

7.9 Similarly, Section 276B talks about the prosecution on failure to pay the TDS after

deducting the same. At this stage, it is required to be noted that Section 271C has been amended subsequently in the year 1997 providing Sections 271C(1)(a) and 271C(1)(b). As observed hereinabove, fails to pay the whole or any part of the tax would be falling under Section 271C(1)(b) and the word used between 271C(1)(a) and 271C(1)(b) is "or". At this stage, it is required to be noted that Section 276B provides for prosecution in case of failure to "pay" tax to the credit of Central Government. The word "pay" is missing in Section 271C(1)(a).

8. Now so far as the reliance placed upon the CBDT's Circular No. 551 dated 23.01.1998 by learned ASG is concerned, at the outset, it is required to be noted that the said circular as such favours the assessee. Circular No. 551

deals with the circumstances under which Section 271C was introduced in the Statute, for levy of penalty. Paragraph 16.5 of the above Circular reads as follows:

> "16.5: Insertion of a new section 271C to provide for levy of penalty for failure to deduct tax at source- under the old provisions of Chapter XXI of the Income Tax Act no penalty was provided for failure to deduct tax at source. This default, however, attracted prosecution under the provisions of Section 276B, which prescribed punishment for failure to deduct tax at source or after deducting failure to pay the same to the Government. It was decided that the first part of the default, i.e., failure to deduct tax at source should be made liable to levy of penalty, while the second part of the default, i.e., failure to pay the tax deducted at source to the Government which is a more serious offence, should continue to attract prosecution. The Amending Act, 1987 has accordingly inserted a new Section 271C to provide for imposition of penalty on any person who fails to deduct tax at source as required under the provisions of Chapter XVIIB of the Act. The penalty is of a sum equal to the

amount of tax which should have been deducted at source.

On fair reading of said CBDT's circular, it talks about the levy of penalty on failure to deduct tax at source. It also takes note of the fact that if there is any delay in remitting the tax, it will attract payment of interest under Section 201(1A) of the Act and because of the gravity of the mischief involved, it may involve prosecution proceedings as well, under Section 276B of the Act. If there is any omission to deduct the tax at source, it may lead to loss of Revenue and hence remedial measures have been provided by incorporating the provision to ensure that tax liability to the said extent would stand shifted to the shoulders of the party who failed to effect deduction, in the form of penalty. On

deduction of tax, if there is delay in remitting the amount to Revenue, it has to be satisfied with interest as payable under Section 201(1A) of the Act, besides the liability to face the prosecution proceedings, if launched in appropriate cases, in terms of Section 276B of the Act.

Even the CBDT has taken note of the fact that no penalty is envisaged under Section 271C of the Income Tax Act for non-deduction TDS and no penalty is envisaged under Section 271C for belated remittance/payment/deposit of the TDS.

8.1 Even otherwise, the words "fails to deduct" occurring in Section 271C(1)(a) cannot be read into "failure to deposit/pay the tax deducted."

8.2 Therefore, on true interpretation of Section 271C, there shall not be any penalty leviable under Section 271C on mere delay in remittance of the TDS after deducting the same by the concerned assessee. As observed hereinabove, the consequences on non-payment/belated remittance of the TDS would be under Section 201(1A) and Section 276B of the Act, 1961.

9. In view of the above in all these cases as the respective assessees remitted the TDS though belatedly and it is not case of non-deduction of the TDS at all they are no liable to pay the penalty under Section 271C of the Income Tax Act. Therefore, any question on

applicability of Section 273B of the Act is not required to be considered any further.

10. In view of the above and for the reasons stated above, all these appeals succeed. Impugned judgment(s) and order(s) passed by the High Court are hereby quashed and set aside and the question of law on interpretation of Section 271C of the Income Tax Act is answered in favour of the assessee(s) and against the Revenue and it is specifically observed and held that on mere belated remitting the TDS after deducting the same by the concerned person/assessee, no penalty shall be leviable under Section 271C

of the Income Tax Act. Present appeals are accordingly allowed. No costs.

.....J.
[M.R. SHAH]

.....J.
[C.T. RAVIKUMAR]

NEW DELHI;
APRIL 10, 2023