

HIGH COURT OF UTTARAKHAND AT NAINITAL

Income Tax Appeal No. 78 of 2007

The Commissioner of Income Tax Dehradun
And another.Appellants

Versus

M/s Enron Expat Services Inc.
C/o Nangia & Co. B-57, Soami Nagar,
New Delhi.Respondent

Mr. Arvind Vashishtha, Advocate for the appellants,
Mr. S.K. Posti, Amicus-curiae for the respondent.

Dated: August 19, 2010

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble V.K. Bist, J.**

Barin Ghosh, C.J. (Oral)

The respondent assessee paid salary to its employees during the relevant assessment year, but did not deduct tax in each month. It deducted tax in October, 1999 and in February, 2000. The Assessing Officer imposed interest on the assessee under Section 201 (1A) of the Income Tax Act. That was assailed before the CIT Appeals unsuccessfully. The matter was taken to the Tribunal, when the Tribunal by the judgment and order under appeal held in favour of the assessee. While doing so, the Tribunal took notice of Sub-Sections 1 and 3 of Section 192 of the Act, the provisions contained in Section 201 (1A) of the Act and various reported judgments rendered by the Tribunal. In the present appeal, the question of law formulated is as follows:-

“Whether the Hon'ble ITAT was correct in law in holding that the assessee company had committed no default by not deducting tax at source on salary payments at the average tax as per provisions of Section 192 (1) of the I.T.

Act, 1961 and deleting the interest charges under Section 201 (1A) by relying on Section 192 (3) of the I.T. Act?”

2. In order to answer this question, one is required to take notice of Sub-Sections 1 and 3 of Section 192 of the Act as well as Section 201 (1A) of the Act, which are as follows:-

“192. Salary.

(1) Any person responsible for paying any income chargeable under the head “salaries” shall, at the time of payment, deduct income-tax on the amount payable at the average rate of income-tax computed on the basis of the [rates in force] for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year.

(3) The person responsible for making the payment referred to in sub-section (1) [or sub-section (1A)] [or sub-section (2) or sub-section (2A) or sub-section (2B)] may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

201. Consequences of failure to deduct or pay-

[(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 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 actually paid [and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of sub-section (3) of section 200].]”

3. The learned counsel appearing in support of the appeal contended that in terms of Sub-Section 1 of Section 192 of the Act, tax is required to be deducted at the time of payment of salary and, accordingly, if salary is paid monthly, tax is required to be deducted monthly. The learned counsel submitted that the words “does not deduct whole or any part of the tax” used in Section 201 (1A) would mean deduction as contemplated in Sub-Section-1 of Section 192 of the Act i.e. obligation to deduct every month when salaries are being paid monthly. It was contended that when deductions were not made on several months when salaries were paid, whole of the tax was not deducted, in terms of Section 201 (1A) of the Act, and accordingly, in terms of the provisions contained therein, the same attracted the provision for imposition of interest.

4. It is true that Sub-Section 1 of Section 192 of the Act contemplates deduction of Income Tax at the time of payment and at the same time, Section 201 (1A) deals with a situation when tax is not deducted, but Sub-Section 3 of Section 192 is a part of Section 192 required to be read with Sub-Section 1 thereof, for nothing has been expressed in the Act to treat Sub-Section 3 as a separate provision. The object and purpose of Sub-Section 3 is to permit the person obliged to deduct to make adjustments. Sub-Section 3 does not stop while authorising adjustment in case of excess or deficient deduction, but also authorises adjustment in case of total failure to deduct during the financial year. Sub-Section 3, therefore, makes it abundantly clear that if there is a failure to deduct in a financial year, the same can be deducted by way of adjustment during the financial year. In those

circumstances, the obligation to deduct at the time of payment, which is the mandate of Sub-Section 1 of Section 192, stands extended upto the end of the financial year by virtue of the provisions contained in Sub-Section 3 of Section 192 of the Act. The right to adjust, granted by Sub-Section 3, does not extend beyond the financial year.

5. The learned counsel for the appellants submitted that in view of the pronouncement as above, the provisions of Section 201 (1A) of the Act would become otiose. We do not think so. Section 201 (1A) applies only when during the financial year whole or any part of the tax deductible has not been deducted. We accordingly, conclude the matter and answer the question, as above, in favour of the assessee, while dismissing the appeal.

6. Let it be recorded that Mr. S.K. Posti is appearing in this matter on behalf of respondent/assessee and Vakalatnama filed by him is accepted and kept on record.

(V.K. Bist, J.) **(Barin Ghosh, C.J.)**
19.08.2010

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