

## Court imposes imprisonment and fine on failure in timely deposit of TDS

Issued on: 7 June 2019



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## Summary

The District court of Mumbai, in a recent case<sup>1</sup>, has imposed rigorous imprisonment and fine on the taxpayer for failure to deposit the tax deducted at source (TDS) after deduction, to the government within stipulated time. It was held that belated deposit of TDS with interest and penalty for delay does not discharge the taxpayer from the prosecution proceedings under the Act. Further, the court noted that the arguments on reasonable cause for failure to deposit the tax on time should be supported by evidence.

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### Facts of the case

- During the financial year 2009-10, the taxpayer had deducted TDS from the payments to various parties as per the provisions<sup>1</sup> of the Income-tax Act, 1961 (the Act). The taxpayer, however, failed to deposit such TDS to the credit of the Central Government within the time stipulated under the Act.
- The said amount was later paid (along with interest and penalty) after a delay of more than 12 months.
- The tax officer obtained a prosecution order from the sanctioning authority against the taxpayer accusing him of delay in deposit of TDS without any reasonable cause<sup>3</sup>.

### Taxpayer's contention

- The taxpayer contended that all the dues, along with interest and penalty have been deposited, before initiating the prosecution proceeding. Therefore, the tax officer's complaint is not maintainable.
- The taxpayer stated that his business and his finances were not in a good condition and the delay occurred due to non-competent staff,

accountant's negligence, unawareness of the taxpayer of TDS provisions.

- These reasons constitute reasonable cause as regards his inability to pay the tax to the Government within stipulated time. Further, the tax along with interest has been paid thereafter.
- There was no intentional default involved, hence the prosecution is not warranted.

### Revenue's contention

- The revenue stated that the explanation given by the taxpayer for failure to pay such TDS does not constitute a reasonable cause.
- The amount of TDS deducted belongs to the Government and the payer acts in a fiduciary capacity. Financial constraints could not be a reason to retain deducted TDS and use it for any other purpose.
- Men's rea is not a requisite for this offence under the Act.

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<sup>1</sup> Income Tax Officer v. Mr. Firoz Abdul Gafar Nadiadwala [Court Case No. 95/SW/2014]

<sup>2</sup> Section 194A, 194C, 194H, 194J of the Act

<sup>3</sup> Section 278AA of the Act

## Court's observation and ruling

- The Court held that the offence punishable under the Act was committed when the tax deducted is not deposited within the stipulated time and late deposit would not discharge the taxpayer from such offence.
- The purpose of prosecution is to punish the offenders found guilty of the tax evasion. The scope and purport of penalty proceedings and prosecution are separate and independent. Reliance was placed to an earlier ruling<sup>2</sup> of the Apex court.
- The court held that only statements were forwarded by the taxpayer but were not supported by any evidence. Thus, it cannot amount to offering a reasonable cause.
- The taxpayer did not follow proper procedure and did not avail the remedy of compounding of offences available to him.
- The Court held that the taxpayer shall undergo rigorous imprisonment of three months along with a fine of INR 5,000/- under the provisions<sup>3</sup> of the Act.

## Our comments

The court has made an important observation regarding desirability of criminal prosecution and stern measures in case of economic offences which is necessitated by rampant attitude of defiance displayed by certain affluent sections of the society. This, judgement highlights the importance taxpayers need to attach to the TDS compliance as courts are taking a strict view of the non-compliant attitude.

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<sup>4</sup> Madhumilan Syntex Ltd and Ors. V. Union of India and Ors. [AIR 2007 SC (148)]

<sup>5</sup> Section 276B of the Act

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