

## Chandigarh, Wednesday, March 26, 2003

*Query:* Maurya Comforts is our firm and we are a tenant of a showroom. We were served with an order of the court by our landlord that no tax be deducted from the rent payment. Based on the court decree, we, Maurya comforts, did not deduct tax at 15% on the rental payment of Rs 1,80,000 for the financial year 2000-01. Can we be penalized for this?

*Opinion:* Under Section 194-I, any person not being an individual or HUF, who is responsible for paying rent at the time of credit of such income to the account of the payee or at the time of payment in cash, cheque or demand draft should deduct tax at source at the rate of 15% if the payee is an individual or a HUF. In any other case, the rate of deduction will be at 20 pc. If the payer omits to deduct tax at source, he will be liable for interest under Section 201 (1A) and also penalty under Section 271 C can be levied.

In your case, you were fully aware of the TDS requirements but the landlord had produced a court decree which directed the payer of the rent (ie. Maurya Comforts) for non-deduction of tax at source.

Maurya Comforts in compliance with the decree has not deducted tax at source and if . the firm would have deducted tax in spite of the court decree, it would have been liable for legal proceedings for contempt of court, hence no penalty can be levied on Maurya comforts. (Case law: Leema Resorts (P) Ltd. Vs G Suryakant (1995) 215 ITR 618.)

### Poor Domestic Drawings

*Query:* I filed my return of income for the assessment 2002-03 declaring an income of Rs 3,10,000. I showed drawings towards domestic expenses as Rs 24,000 for the year. My son is studying in a college of engineering, my daughter is college-going and my residence telephone bill of Rs 46,800 for the year were the other expenditures incurred by me in addition to family expenses. The Assessing Officer made an addition of Rs 80,000 towards insufficiency of drawings and initiated penalty proceedings under Section 271 (1) (c). Is the action valid?

*Opinion:* A return processed under section 143(1) will not be subject to any such detailed examination. However, where the assessment is made under Section 143(3) or under Section 147 or under Section 144 then the Assessing Officer will apply his mind and test the veracity of the expenditures incurred into their genuineness and sufficiency.

In this case, you ought to have discharged your burden of proving the sufficiency of the drawings towards various expenditures incurred by you during the year. For example your spouse, if also has some income, can meet the expenses listed in this case. Also, if one has ancestral property and income, one can identify the source for meeting the expenses. Generally, based on the background of the assessee, one can give explanation to the Assessing Officer justifying that the drawings were sufficient for meeting his household commitments.

Assuming that you could not discharge your burden of proof to the Assessing Officer, then the Assessing Officer has enough powers to initiate penalty under Section 271 (1)(c). The penal provision is applicable if the assessee has concealed income or has given inaccurate particulars for the purpose of complying

with the provisions of law. In this case, you have been unable to discharge your onus and hence you are liable for penalty.

In *Yashwant Singh v. CIT (1995) 212 ITR 207 (Raj)*, the Rajasthan High Court held that if the assessee could not prove or justify the withdrawals for household expenses to the actual expenses incurred or detected by the Revenue then it would mean that he could not discharge his burden of proof and the Assessing Officer can levy penalty under Section 271 (1)(c). Hence penalty proceedings initiated in the above case is valid.

#### Budget 2003

*Query:* I have an annual taxable income of Rs 8,60,000 . My tax liability works out to Rs 2.32 lakh + surcharge Rs 23,200= Rs 2,55,200, as per the new tax structure in the Budget 2003. I fail to understand that had my income been Rs 8.5 lakh, I would have paid Rs 2,29,000 only. Now for an increase of income by Rs 10,000 above Rs8.5 lakh, I have to pay Rs 26,200 extra. What sort of structure is this ?

*Opinion:* In your case, the tax liability is going up by Rs 26,200 which turn out to be more than the rise in Income (i.e. Rs 8.50 lakh to Rs8.60lakh). In order to provide relief in such cases, there is a provision whereby the additional income tax payable, including surcharge on the excess of income over Rs 8.5 lakh, is restricted to the amount of increase above Rs 8.5lakh.

This means that the actual tax liability for the person with an income of Rs 8.6lakh, as in your case, will be Rs 239,000 (Rs2,29,000 on Rs 8.5 lakh+ Rs 10,000) and not Rs 255,200 as calculated normally.

According to the Budget's fine print, this kind of marginal relief will be available till the income comes to around the Rs 8.85 lakh mark as till this stage, the additional tax payable will be higher than the additional income over Rs8.5lakh.