

TAX FLASH NEWS

No penalty or interest for a delay in filing of return of income due to failure of the deductor to pay the tax deducted at source to the government

Background

Recently, the Bombay High Court in the case of Zulfikar Jeewanjee Moriswala & Anr.¹ (the taxpayers/ deductees) held that the taxpayer cannot be subject to any penal or financial consequences on account of a delay in uploading of their return of income because of the failure of the deductor who had not deposited the tax deducted at source with the government.

Facts of the case

- The taxpayers (Non-Residents Indians), in February 2014, along with another resident co-owner sold the immovable property to Vardhaman Developers Ltd. for a consideration of INR90 million.
- Vardhaman Developers Ltd., after deducting the tax at source at 20 per cent out of the sum payable to each of the taxpayers, paid the balance consideration to the taxpayers. However, Vardhaman Developers Ltd. did not deposit the tax into the government treasury.
- The taxpayers, by notice dated 21 July 2014, requested Vardhaman Developers Ltd. to deposit the tax with the government. Further, it was pointed out that this non-deposit would cause them prejudice as they would not be able to upload their return of income for the Assessment Year (AY) 2014-15, which was due to be filed on 31 July 2014.
- However, Vardhaman Developers Ltd. did not act upon the same. Consequently, the taxpayers could not upload their return of income.

- Thereafter, on 12 August 2014 and 26 December 2014, the taxpayers by their Chartered Accountant's letter brought the aforesaid facts to the notice of the Commissioner of Income Tax (TDS) [CIT(TDS)].
- However, CIT(TDS) was unmoved and apparently did not take any action against Vardhaman Developers Ltd.

High Court's Ruling

- The High Court was shocked at the attitude of the CIT(TDS) and also the conduct of Vardhaman Developers Ltd., which had resulted in unnecessary harassment of the taxpayers.
- The High Court observed that Vardhaman Developers Ltd. had paid the tax deducted at source to the government treasury together with interest, and the taxpayers would now be able to upload their returns of income. The tax department also confirmed the same.
- In view of above, the High Court allowed the taxpayers to upload their return of income and directed the tax department that no penal or financial consequence would visit the taxpayers on account of a delay in uploading their returns of income for no fault of theirs.

Our comments

This is a welcome ruling of the Bombay High Court. This ruling will provide relief to the taxpayers from penalty and interest for delay in filing of return of income due to failure of the deductor to pay the tax deducted at source with the government.

¹ Zulfikar Jeewanjee Moriswala & Anr. v. DCIT(TDS) [Writ Petition (L) No. 337 of 2015] (Bom) – Taxsutra.com

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