



### **No prosecution for delays in the Deposit of TDS**

Since the TDS and interest were already deposited, the Hon'ble Bombay High Court has dismissed the prosecution's case for late TDS submission under the Income-tax Act.

The High Court has ruled that prosecutions for violations of sections 276B and 278B of the Income Tax Act related to the failure to deposit TDS within the allotted time have been annulled because TDS had previously been deposited with interest as stipulated by section 201(1A). Per CBDT Circulars dated 24 April 2008 and 28 May 1980, prosecutions shouldn't begin in cases where taxes have been deposited.

### **Hemant Mahipatray Shah and another vs. Sahil Arora and another (CRIMINAL WRIT PETITION NO.3039 OF 2022)**

#### **Gist of the Case**

- (i) No notice has been issued by the "Assessing Officer" to any of the petitioners under Section 2 (35) (b) of the I.T Act to treat any of them as "Principal Officer" of the Company.
- (ii) No order as contemplated under Section 201 (1) r/w Section 201 (3) of the I.T Act has been passed treating any of the petitioners as 'Principal Officer" of the company and by which such Principal Officer is whereby "deemed to be assessee in default".
- (iii) In respect of assessment year 2017-2018, a positive order has been passed holding the Company not to be "Assessee in Default".
- (iv) No order imposing penalty (either initially or further penalty) as "deemed to be an assessee in default" under Section 221 has been passed against the company or any of the petitioners.

- (v) The petitioners are “Directors” of the Company, however, no averment has been made in the complaints regarding “Consent”, “Connivance” or “negligence” as required under Section 278B (2) of the I.T Act.
- (vi) It is incumbent upon the department to prove that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary, or other officer of the company.
- (vii) A combined reading of Circulars dated 28th May, 1980 and 24th April, 2008 contemplate that prosecution ought not be launched where the tax has been deposited. Madhumilan Syntex Ltd and others Vs Union of India (2007) 11 Supreme Court Cases 297, would not be made applicable in view of the Circular dated 24th April, 2008 and, therefore, it cannot be treated as a precedent for the period after 24th April, 2008. It is also expedient to note that Circular dated 24th April, 2008 prescribes that the prosecution is to be launched within sixty days of deduction of the default.”