

- 1. Disallowance under section 43B can be made in respect of statutory liabilities even though assessee's income was assessed under section 44AF.** A perusal of section 44AF clearly shows that the opening words in the said section are 'notwithstanding anything to the contrary contained in sections 28 to 43C'. A perusal of the provisions of section 43B shows that the opening words are 'notwithstanding anything contained in any other provisions of this Act'. As per the provisions of section 44AF admittedly once the presumptive tax provisions are applied, the income of the assessee is fixed at 5 per cent of the total turnover. The *non obstante* clause in section 44AF is not the only words that call for interpretation. When the presumptive tax rate is applied under section 44AF, the said sum equalling 5 per cent of the total turnover is deemed to be the profit and gains of such business chargeable to tax under the head 'Profits and gains of business or profession'. It only means that the deduction allowable under sections 28 to 43C is deemed to have been already granted to the assessee. This is because the said provisions under sections 28 to 43C are provisions relating to the computation of business income of the assessee. However, a perusal of the provisions of section 43B shows that the said provision is a 'restriction' on the allowance of a particular expenditure representing statutory liability and such other expenses claimed in the profit and loss account unless same has been paid before the due date of filing the return. The statutory liability in the present case has not been paid before the due date of filing the return. Further, the *non obstante* clause in section 43B has a far wider amplitude because it uses the words 'notwithstanding anything contained in any other provisions of this Act'. Therefore, even assuming that the deduction is permissible or the deduction is deemed to have been allowed under any other provisions of this Act, still the control placed by the provisions of section 43B in respect of the statutory liabilities still holds precedence over such allowance. This is because the dues to the crown have no limitation and have precedence over all other allowances and claims. In these circumstances, the disallowance made by the Assessing Officer by invoking the provisions of section 43B in respect of the statutory liabilities are in order even though the assessee's income has been offered and assessed under the provisions of section 44AF. **Good Luck Kinetic v. ITO [2015] 69 SOT 416 [Panji – Trib].**
- 2. No penalty u/s 272B in a case where assessee failed to mention correct PAN of few deductees in quarterly e-TDS return which in fact were not available with it at relevant time but on later on it obtained correct PANs and filed revised return.** The provisions of section 272B are subject to section 273B which provides that notwithstanding anything contained in the provisions, *inter alia*, of section 272B, no penalty shall be imposed for any failure referred to in the said provision if it is proved that there was a reasonable cause for the said failure. Considering the entirety of the facts and circumstances prevailing in the instant case, there was a reasonable cause in the assessee for not mentioning the correct PANs in respect of a few deductees at the time of originally filing e-TDS quarterly statement of deduction of tax in Form No.26Q, which were, in fact, not available with the assessee at the material time. As and when the necessary information was obtained, the assessee corrected the lapse and revised the statement by furnishing due particulars thereof. The Commissioner (Appeals) was justified in deleting the

penalty by relying on the judgment of the Supreme Court in the case of *Hindustan Steel Ltd. v. State of Orissa* [\[1972\] 83 ITR 26](#), in which the Supreme Court has laid down that penalty cannot be ordinarily imposed unless the party obliged either acts deliberately in defiance of law or is guilty of conduct contumacious or dishonest, or acts in conscious disregard of its obligation. **Income-tax Officer (TDS), Rohtak v. Executive Engineer** [2015] 69 SOT 421 [Delhi – Trib]