

- 1. Proviso to section 201(1), which bars imposition of penalty under section 221 unless Assessing Officer is satisfied that failure to deduct and pay tax was without good and sufficient reasons, would have no application where assessee had deducted tax but fails to pay.** The words 'failed to deduct and pay tax' in the proviso to section 201(1) are contrasted with the words 'fails to pay the tax as required by or under this Act' found in section 201(1) as well as section 201(1A). In view of this difference in language, it is submitted that the proviso would have no application where an assessee has paid the tax even if the same is paid beyond the period provided under the Act. This is contested by the revenue on the ground that the proviso applies only in case of a person who has failed to satisfy both the conditions therein, *i.e.*, fails to deduct and also fails to pay the tax. This interpretation is also supported by the words found in sub-section(1) of section 201 which provides ". . . principal officer of the company does not deduct or after deducting fails to pay the tax as required by or under this Act'. In this case, the tax has been deducted but there is a failure in depositing the tax with the revenue. The Parliament treats a person who has deducted the tax and fails to pay it to revenue as a class different from a person who has not deducted the tax and also not deposited the tax with revenue. This is for the reason that in the first class of cases the assessee concerned after deducting the tax, keep the money so deducted which belongs to another person for its own use. In the second class of cases, the assessee concerned does not take any advantage as he pays the entire amount to the payee without deducting any tax and does not enrich itself at the cost of the Government. Therefore, although penalty is also imposable in the second class of cases, yet in view of the proviso to section 201(1), it is open to such assessee to satisfy the Assessing Officer that as they have good and sufficient reasons no penalty is imposable. It is in the above view that in the first class of assesseees the Parliament has provided for prosecution under section 276B for failing to pay the tax deducted at source. Therefore, the first class of assessee to which the appellant belongs would be liable for prosecution. Thus, the proviso would only apply in respect of the second class of assessee, *i.e.*, such class of assessee who have not deducted the tax and, consequently, failed to pay the tax. **Reliance Industries Ltd. v. CIT, [2015] 233 Taxman 307 (Bombay)**
- 2. Where assessee sold a property and purchased another residential plot and commenced construction, which was not completed within three years, benefit of section 54F will be available, once it was established by assessee that she had invested entire net consideration in construction of residential house within stipulated period.** Section 54F is a beneficial provision which promotes for construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it is incorporated in the statute. The intention of the Legislature would clearly indicate that it was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired. A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in three years and/or make it habitable. The essence of said provision is to ensure that the assessee who received the consideration would invest same by constructing a residential house. Once it is established that consideration so received on transfer of long-term capital asset has been invested in constructing a residential house, it would satisfy the ingredients of section 54F. If the assessee is able to establish that she had invested the entire net consideration in construction of

residential house within the stipulated period, it would meet the requirement of section 54F and she would be entitled to get the benefit of section 54F. ***CIT v. Smt. B.S. Shanthakumari [2015] 233 Taxman 347 (Karnataka)***