

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.255/Mds/2017

निर्धारण वर्ष / Assessment Year : 2009-10

TH 130 M/s Bharathiyar PWCS Ltd.,
No.86A, East Colony, Komarapalayam,
Namakkal Dt. – 638 183. v. The Income Tax Officer,
TDS Ward,
Salem.

PAN : AAAAB 7285 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. S. Sriniranjani, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 20.09.2017

घोषणा की तारीख/Date of Pronouncement : 27.09.2017

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Salem, dated 30.09.2016, confirming the penalty levied by the Assessing Officer under Section 271C of the Income-tax Act, 1961 (in short 'the Act').

2. There was a delay of 16 days in filing this appeal by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. counsel for the assessee and the Ld. D.R. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Ms. S. Sriniranjani, the Ld.counsel for the assessee, submitted that the assessee - co-operative society, due to ignorance of law, failed to deduct tax in respect of contract payment to the extent of ₹23,66,415/-. According to the Ld. counsel, the assessee in fact deducted the amount subsequently to the extent of ₹30,272/- and the same was paid to the Department on 29.08.2013. The balance amount of ₹18,476/- along with interest under Section 201(1A) of the Act to the extent of ₹33,636/- was remitted to the Government account on 12.03.2014. Therefore, the Ld.counsel by placing reliance on the unreported judgment of Apex Court in CIT v. Bank of Nova Scotia in Civil Appeal No.1704 of 2008 dated 07.01.2016, submitted that the penalty cannot be levied.

4. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the assessee paid contract amount

without deducting tax, therefore, the Assessing Officer levied penalty under Section 271C of the Act. Since the assessee has not complied with mandatory requirement of TDS under Section 194C of the Act, according to the Ld. D.R., the Assessing Officer levied penalty of ₹48,748/- and the same was rightly confirmed by the CIT(Appeals).

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the assessee failed to deduct tax in respect of contract payment. The assessee was expected to deduct ₹48,748/- under Section 194C of the Act in respect of contract payment. However, the same was not deducted during the year under consideration. However, subsequently, the assessee deducted and paid ₹30,272/- on 29.08.2013. The balance amount of ₹18,476/- along with interest of ₹33,636/- was paid on 12.03.2014. These factual aspects are not in dispute. On identical circumstances, Delhi High Court in CIT v. Itochu Corporation (2004) 268 ITR 172 and in CIT v. Mitsui & Co. Ltd. And Another (2005) 272 ITR 545, deleted the penalty. The Apex Court, after reproducing the observation made by the Delhi Bench of this Tribunal, confirmed the order of the Delhi

High Court in Bank of Nova Scotia. In fact, the Apex Court observed as follows:-

“2. The matter was pursued by the Revenue before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide order dated 31.03.2006 entered the following findings:-

“11. We have carefully considered the rival submissions. In the instant case we are not dealing with collection of tax u/s 201(1) or compensatory interest u/s 201(1A). The case of the assessee is that these amounts have already been paid so as to end dispute with Revenue. In the present appeals we are concerned with levy of penalty u/s 271-C for which it is necessary to establish that there was contumacious conduct on the part of the assessee. We find that on similar facts Hon'ble Delhi High Court have deleted levy of penalty u/s 271-C in the case of M/s Itochu Corporation, reported in 268 ITR 172 (Del) and in the case of CIT Vs. Mitsui & Company Ltd. reported in 272 ITR 545. Respectfully following the aforesaid judgments of Hon'ble Delhi High Court and the decision of the ITAT, Delhi in the case of Television Eighteen India Ltd., we allow the assessee's appeal and cancel the penalty as levied u/s 271-C.”

3. Being aggrieved, the Revenue took up the matter before the High Court of Delhi against the order of the Income Tax Appellate Tribunal. The High Court rejected the appeal only on the ground that no substantial question of law arises in the matter.”

6. Respectfully following the judgment of Apex Court in Bank of Nova Scotia (supra), penalty levied by the Assessing Officer is deleted and the appeal of the assessee is allowed.

Order pronounced on 27th September, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A), Salem
4. आयकर आयुक्त / CIT, TDS, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.