

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SMT BEENA PILLAI, JUDICIAL MEMBER

ITA No.6150/Del/2015
Assessment Year: 2008-09

Merino Industries Ltd.,
C/o R.K. Garg,
T-314, Ganga Plaza,
Begum Bridge Road,
Meerut.

Vs. Addl.CIT (TDS),
Ghaziabad.

PAN: AAACC9186C

(Appellant)

(Respondent)

Assessee By : Shri R.K. Garg, Advocate
Department By : Shri Atiq Ahmad, Sr. DR

Date of Hearing : 15.11.2017

Date of Pronouncement : 16.11.2017

ORDER

PER R.S. SYAL, VP:

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 09.09.2015 confirming penalty of Rs.55,219/-

u/s 271C of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2008-09.

2. Briefly stated, the facts of the case are that the assessee paid a sum of Rs.5,935/- on which no deduction of tax at source was made u/s 194A of the Act. Similarly, another sum of Rs.5,30,068/- was paid to certain persons without making deduction of tax at source u/s 194H of the Act. The Assessing Officer treated the appellant as assessee in default by passing order u/s 201(1) and 201(1A). The assessee explained its position and paid the tax due thereon along with the requisite amount of interest. Thereafter, the Assessing Officer imposed penalty u/s 271C equal to the amount of TDS at Rs.55,219/-. The ld. CIT(A) affirmed the order of the Assessing Officer, against which the assessee has come up in appeal before the Tribunal.

3. We have heard both the sides and perused the relevant material on record. In so far as the first default u/s 194A is concerned, it is seen that the assessee, apart from carrying on manufacturing and wholesale trading of laminated sheet, also started to develop a new variety of

potato seeds on its land for the first time. An agreement was made with Mohammad Salim for supplying the potato seeds, which were to be developed by it. Advances of Rs.50,000/- and Rs.80,000/- were received for this purpose. Since the assessee company could not successfully produce the potato seeds, it returned the advance earlier received along with interest of Rs.5,935/-. It is this amount of Rs.5,935/- on which the appellant was treated as assessee in default for non-deduction of tax at source u/s 194A of the Act.

4. It is observed that the assessee canvassed a view that no loan was taken by it and, hence, the advance deposited against the supply and the excess interest was in the nature of compensation thereby not requiring any deduction of tax at source. In all other cases of interest on loans, the assessee admittedly deducted tax at source.

5. Section 271C is subject to the provisions of section 273B. The later provision envisages that in case of default under the respective provisions on a *bona fide* basis, no penalty should be imposed. Considering the facts and circumstances of the instant case, we are

satisfied that the failure of the assessee to deduct tax at source u/s 194A on the sum of Rs.5,935/- was *bona fide* and, hence, the assessee should not have been visited with penalty u/s 271C of the Act. Such penalty is directed to be deleted.

6. The other default is u/s 194H of the Act. The assessee paid commission to its regular commission agent. Invariably, the assessee deducted tax at source on such commission payments. However, in case of K. Marketing Services Ltd., the agent was not paid commission by the company, but, sale proceeds were received after deduction of commission. The accountant did not specifically debit the commission amount and credit the party but showed net amount as sale consideration. This led to non-deduction of tax at source on commission paid to this person.

7. Here, again, we find that failure to deduct tax at source u/s 194H of the Act was *bona fide* because of the wrong depiction of sale proceeds on net basis by the accountant without separately showing the amount of commission. Similar is the position regarding sale made by the assessee

to M/s Parveen Trading Co., Ramneek Lal G Sah and Ram Lal Chanan Das, who sent the net sale proceeds after deducting expenses including the amount of commission. The accountant recorded sale proceeds on net basis which led to non-deduction of tax at source on commission charged by the seller. Following the view taken for commission paid to K. Marketing Services Ltd., we hold that the appellant cannot be considered as assessee in default for non-deduction of tax at source on commission retained by the other parties as well.

8. To sum up, we overturn the impugned order and direct to delete the entire penalty confirmed u/s 271C of the Act.

9. In the result, the appeal is allowed.

Order pronounced in the open court on 16th November, 2017.

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Dated, 16th November, 2017.

dk

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.