

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SH.N.K.SAINI, ACCOUNTANT MEMBER
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 3239/Del/2015
(ASSESSMENT YEAR: 2009-10)**

ITO, Ward-74(2), Room No.-413,Aayakar Bhawan, Laxmi Nagar,Delhi-110092.	vs	DLF Southern Homes Pvt.Ltd., 1-E, Naaz Cinema Complex, Jhandewalan Extn., New Delhi-110055. PAN-AACCC8270B
(Appellant)		(Respondent)

Appellant by	Sh. Arun Kumar Yadav, Sr. DR
Respondent by	Sh.R.S.Singhvi, CA
Date of Hearing	14.12.2017
Date of Pronouncement	15.12.2017

ORDER

PER K.N.CHARY, JM

Aggrieved by the order dated 27.02.2015 in Appeal No.357/14-15 passed by the Ld. Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-18, New Delhi for the AY 2009-10, the Revenue filed this appeal on the following grounds:-

1. *"Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in deleting the penalty amounting to Rs.48,42,700/- levied u/s 271C of the IT Act, 1967.*
2. *Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in holding that assessee was not liable for deduction of tax at source on provisions of Brokerage made in books of account."*

2. Briefly stated, relevant facts giving rise to this appeal are that the assessee was executing real estate projects, namely, OMR & Begur Projects in the state of Tamil Nadu during the relevant period and these projects were to be completed in about 3 years period. As a common practice, brokerage was given to the brokers, who book flats/property on behalf of the builder. Since the projects were in the initial stage at the time of closure of the relevant accounting year, there was total uncertainty about the specific parties and specific amount of brokerage payable to each at the relevant point of time due to the non-fulfillment of the conditions, as such, only ad hoc provision for brokerage expenses amounting to Rs. 4,84,27,000/- was created by the assessee in the books of accounts at the time of annual closing. For the assessment year 2009-10 the assessee filed their return of income on 29/09/2009 declaring a total income of Rs. 35,97,93,144/-, but while computing the total income the ad hoc provision of Rs. 4,84,27,000/- was offered to tax. However during the scrutiny the assessing officer computed the income of the assessee at Rs. 36,29,27,177/- as against the returned income of Rs. 35,97,93,144/-. Simultaneously, the assessing officer initiated penalty proceedings on account of non-deduction of TDS for provision for brokerage and advertisement expenses stating that he was satisfied that the entire amount of provision for brokerage and advertisement expenses stood added back in the computation of total income, and that due tax paid by the assessee company. Penalty of Rs.48,42,700/- was levied.

During appeal, Ld. CIT(A) considered the contention of the assessee that only AD HOC provision for brokerage expenses was made by the assessee in the books of account at the time of annual closing but nothing was due to be paid on account of brokerage, and since only ad hoc provision was made, TDS was not practically feasible to be deducted by the assessee and, at the same time, no benefit of the provisions made for the expenses was availed by the assessee and due tax was paid in full, as such there is neither any tax evasion nor loss of revenue to the government. Ld. CIT(A) further held that explanation (iv) of section 194H of the Act, is not applicable to the facts of the case. Challenging these findings of the Ld. CIT(A), the revenue is in appeal before us.

3. Ld. DR relied upon the assessment order whereas it is the submission of the Ld. AR that though an ad hoc provision was created, without claiming any deduction, and as and when the payments were made TDS over brokerage was deducted.

4. We have carefully gone through the record. There is no contravention of the observations of the Ld. CIT(A) that in view of the fact that nothing was due to be paid on account of brokerage at the time of creation of the provision for brokerage expenses, TDS was not practically feasible to be deducted by the assessee on the provision so made, and as and when the payments were made to the brokers, TDS was deducted and remitted to the

Government. So also is not disputed that no benefit of any provision for expenses was availed by the assessee and due tax was paid in full, as such there is neither tax evasion nor loss of revenue to the Government. In the circumstances, the controverted facts establish that because of the peculiarity of the circumstances involved in this matter, namely, at the time of creation of the provision for brokerage expenses, neither the names of the brokers nor the amounts to be paid to them on account of brokerage was a determinable owing to the fluid situation, due to which TDS was not practically feasible to be deducted by the assessee, and more particularly in view of the fact that the assessee neither claimed nor availed any benefit of the provision made for expenses and paid due tax in full, we are of the considered opinion that the findings of the Ld. CIT(A) that there is neither any tax evasion nor loss of revenue to the Government do not suffer any illegality or irregularity, and that this tribunal cannot interfere with the same. We, therefore, uphold the finding of the Ld. CIT(A) and hold that the appeal is devoid of merits. We, accordingly, dismiss the grounds of appeal.

5. In the result, appeal of the revenue is dismissed.

The order is pronounced in the open court on 15th December, 2017.

**Sd/-
(N.K.SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(K.N.CHARY)
JUDICIAL MEMBER**

Amit Kumar
Date:- 15.12.2017

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI