

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" New Delhi**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.2362/DEL/2015
Assessment Year: 2007-08

Intercontinental Consultants and Technocrats Pvt. Ltd., A-8, Green Park, New Delhi.	vs.	Dy. CIT, Circle-74(1), New Delhi.
TAN/PAN: AAACI 1674B		
(Appellant)		(Respondent)

Appellant by:	Shri Praveen Dwivedi, CA		
Respondent by:	Shri Amit Jain, Sr.D.R.		
Date of hearing:	26	07	2018
Date of pronouncement:	07	08	2018

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 20.02.2015, passed by the CIT(Appeals)-XIII, New Delhi in relation to penalty proceedings initiated u/s.271(1)(c) for the Assessment Year 2007-08. The assessee is mainly aggrieved by levy of penalty u/s. 271(1)(c) of Rs.2,31,839/-.

2. The facts in brief are that the assessee is engaged in providing engineers and technical consultants for infrastructures projects. During the survey conducted by the Department on 11.02.2008, it was found that there was non-deduction/short deduction of tax at source and order passed u/s. 201(1)/201(1A) treating assessee as assessee in default.

The Assessing Officer initiated proceedings and levied penalty u/s. 271(1)(c) for the amount not deducted at Rs.2,31,839/-. The assessee's contention before the Assessing Officer was that it has paid professional charges of Rs.49.24 lacs to nonresident persons who are covered under the DTAA, and therefore, it was a under *bona fide* belief that no TDS was to be deducted. However, Assessing Officer held that there is no reasonable cause for non deduction of TDS. Accordingly, he levied the penalty of Rs.2,31,839/- for the impugned Assessment Year .

3. Before the ld. CIT (A), the assessee has made following submissions:-

- “i. As regards the payment of professional charges the TDS was short deducted as the assessee was the bonafide belief that the TDS was not deductible as the relevant portion of payment were covered under the Double Taxation Avoidance Agreement This reason has been rejected by the Additional Commissioner without rejected detailed reasons for rejection of the assessee's submission in this regard,*
- ii. The TDS on payment to persons covered in (ii) above has been deposited voluntarily and suo moto immediately on the default being pointed out and much before the default came to the knowledge of the Department on 11.02.2008 under survey proceedings.*
- iii. Since, the TDS was deposited by the voluntarily and suo moto and the non deposit was solely due to bona fide reasons there is no reasons for the levy of penalty under appeal.”*

4. However, the ld. CIT (A) has confirmed the penalty on the ground that the assessee is assisted by highly qualified professionals and such an explanation cannot be held to be a *bona fide* belief.

5. After hearing both the parties and on perusal of the impugned order, it is seen that on the payment of professional charges, there was a short deduction of TDS. The explanation of the assessee was that it was under a *bona fide* belief that TDS was not deductible as the relevant portions of the payment were covered under The DTAA. Further, the TDS has already been deposited voluntarily and *suo moto* immediately on the default being pointed out and much before the default coming to the knowledge of the Department on 11.02.2008 under the survey proceedings. Thus, if the assessee has voluntarily *suo moto* deposited the tax much before the default coming into notice and at the time of payment if there was a *bona fide* belief that the payments are covered under DTAA it cannot be held that there was any contumacious conduct on the part of the assessee for not deducting / short deducting the TDS. Accordingly, we hold that under these facts, the assessee had reasonable and bonafide reason for non-deduction of TDS on payments made to nonresidents and will fall in the realm of *bona fide* belief as contemplated u/s.273B; and accordingly, the penalty levied by the Assessing Officer and confirmed by the Id. CIT (A) is directed to be deleted.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 7th August, 2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 7th August, 2018

PKK: