

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1109/Kol/2016
Assessment Year: 2011-12
&
I.T.A. Nos. 1348 to 1352/Kol/2016
Assessment Years: 2011-12 to 2013-14

Haldia Municipality (PAN: AAALH0011J)	Vs.	Deputy Commissioner of Income-tax, Circle-59 (TDS), Kolkata
Appellant		Respondent

Date of Hearing	27.11.2018
Date of Pronouncement	30.11.2018
For the Appellant	S/Shri Ananda Sen & S. Mondal, Advocates
For the Respondent	Shri Saurabh Kumar, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

ITA Nos. 1109/Kol/2016 preferred by the assessee is against the order of the Ld. CIT(A) -24, Kolkata dated 14.03.2016 for AY 2011-12 and ITA Nos. 1348 to 1352/Kol/2016 preferred by the assessee are against the separate orders of Ld. CIT(A) -24, Kolkata dated 29.03.2016 for AYs. 2011-12 to 2013-14. Assessee also filed three appeals against the order of Ld. CIT(A) in respect of confirming the penalty imposed u/s. 271C of the of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

2. At the outset itself, the Ld. Counsel for the assessee brought to our notice the fact that the AO (TDS) found fault with the assessee which is a local authority in not deducting TDS as prescribed by law while making certain payments. So by invoking sec. 40(a)(ia) of the Act the AO disallowed the expenditure claimed by the assessee. The Ld. AR drew our attention to the second proviso to sec. 40(a)(ia) of the Act read with sec. 201(1) of the Act and stated that the Parliament in its wisdom has provided relief from the rigor of disallowance u/s. 40(a)(ia) of the Act in case if the payee has reflected the income in its return and offered it to tax. According to Ld. AR, all the payments assessee has made to the

payees have been duly reflected as their income in their respective returns and has offered to tax, therefore, by application of the second proviso of sec. 40(a)(ia) of the Act read with sec. 201(1) of the Act, the disallowance was not warranted. He also drew our attention to page no. 3 of the paper book wherein we note that the Kolkata Port Trust has already issued Form No. 26A certifying that it had duly included the amount it received from the assessee herein in its return of income. In such as scenario, we deem it fit to set aside the impugned orders of Ld. CIT(A) and remand the matter back to the file of AO (TDS) to verify as to whether all the payees have included the payments made by the assessee in their respective returns and in case if they have done so, the disallowance of payment/expenditure invoking section 40(a)(ia) of the Act is not warranted. We note that though the second proviso to sec. 40(a)(ia) of the Act was inserted by Finance Act, 2012 w.e.f. April 1, 2013, and it has been held to be retrospective with effect from April 1, 2005, being the date from which sub-clause (ia) of sec. 40(a) was inserted by Finance (No.2) Act of 2004. For that reliance is also placed on the decision of the Hon'ble Delhi High Court in CIT Vs. Ansal Landmark Township Pvt. Ltd. 377 ITR 635 (Del) and we note that similar action as directed by us (supra) has been upheld by Hon'ble jurisdictional High Court in PCIT-8 Vs. M/s. Tirupati Construction (GA 2146 of 2016) dated 23.08.2016.

3. Since the other three appeals are against the penalty levied u/s. 271C of the Act for non-deduction of TDS, the question to initiate penalty itself arises only after the AO (TDS) decides the question as to whether the invocation of sec. 40(a)(ia) is warranted for non-deduction of TDS, when 2nd proviso to sec. 40(a)(ia) read with sec. 201(1) of the Act is complied with by the payees and that decision AO (TDS) has to first complete in accordance to law, as directed by us supra. Therefore, penalty appeals are also set aside to the file of the AO/JCIT to decide afresh after deciding as to whether disallowance is warranted for non-deduction of TDS.

4. In the result, all the appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 30th November, 2018.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 30th November, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

- 1 Appellant – Haldia Municipality, Dr. B. R. Ambedkar Bhavan, City Centre, Halida, Purba Medinipur, Pin-721657.
- 2 Respondent – DCIT, Circle-59, Kolkata
- 3 CIT(A)-24, Kolkata. (sent through e-mail)
4. CIT, Kolkata
- 5 DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar