

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA Nos.1575, 1577/Del/2015
Asstt. Years: 2009-10, 2011-12

The Joint Secretary, Organising Committee for Winter Games 2009 C/o Rajnish & Associates, No. 92 & 87 Defence Colony, Flyover Market New Delhi PAN AAA01473G	Vs.	JCIT TDS Dehradun
(Appellant)		(Respondent)

Assessee by:	Shri Ashwani Taneja, Advocate, Shri Saurabh Goyal, CA
Department by :	Shri Sridhar Dora, Sr. DR
Date of Hearing	27/11/2018
Date of pronouncement	27 /11/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeals have been filed by the assessee against impugned orders of even date, 24.12.2014 passed by Ld. CIT (Appeals) Dehradun in relation to the penalty proceedings u/s 271C for the assessment year 2009-10 and 2011-12. Since issues involved in both the appeals are common arising out of identical set of facts, therefore, same were heard together and are being disposed off by way of this

consolidated order. In both the appeals assessee is aggrieved by levy of penalty u/s 271C on account of short deduction of TDS as worked out in order passed u/s 201(1) / 201(1A). In the assessment year 2009-10, assessee has challenged levy of penalty of Rs. 36,18,971/- and in assessment year 2011-12 assessee has challenged the penalty of Rs. 23,57,893/-.

2. The facts in brief are that the assessee is engaged in organizing SAF winter games, 2009(games) in Uttarakhand and is involved in development of infrastructure facilities such as stadiums, ice skating rink, development of Ice skiing slopes, ancillary sports facilities and other infrastructures for games. Survey u/s 133A of the Act was conducted on 31.01.2011 and it was noticed that assessee is required to deduct tax at sources on payment made to various parties, which has not been deducted. Summons u/s 131 of the Act was also issued to the Accounts Officer of the assessee. The Ld. AO noted that the assessee has made a payment to foreign party in France/Italy on which no tax is deducted u/s 195 of the Act. The assessee has contested that payment was made for the purchase of equipments and therefore, no tax is required to be deducted. The Ld. AO rejected the contention of the assessee and on reading of the contract held that the payment is covered u/s 9(1)(vii) of the Act as fees for technical services. Hence, provision of section 195 of the Act applies and the assessee should have deducted tax at source or Rs. 2,97,045/- @ 10.5575%. He further charged interest u/s 201(1A) of the Act. Further, he noted that the assessee has made various payments to other parties and it was noted by him these parties are engaged in construction work for games and TDS u/s 194C of the Act should have been made on payments to them. Assessee explained that these are government departments and payments are made to these agencies in the form of grants based on utilisation of funds. Hence, it

was contended that no tax was required to deduct. The Ld. AO rejected the contention of the assessee holding that payments are made by the assessee for construction work of various infrastructure facilities. He further held that grants are not shown that it has been transferred without any control etc. He further held that the payments made to various concerns are subject to TDS u/s 194C of the Act. He therefore, held that TDS @2% should have been deducted and worked out short deduction of Rs. 2,80,6886/- and interest thereon of Rs. 1018645/-. In the above payment, assessee has also made payment of Rs. 8.69 crores to State Trading Corporation India Ltd. for which assessee submitted that payment are for import of equipments along with installation and commissioning charges and no tax is required to be deducted thereon. AO also rejected this argument holding that assessee has imported material/equipment from other through STC and it has acted as agent of the assessee and incurred various incidental expenses such as duty, clearance charges, freight and other expenses, which are covered u/s 194C of the Act.

3. AO has levied penalty u/s 271C on the ground that assessee has failed to deduct tax and therefore penalty u/s 271C is leviable. Ld. CIT (A) too has confirmed the said penalty after detailed discussion.

4. Before us Ld. Counsel for assessee Shri Ashwani Taneja submitted that similar penalty was levied in the appeal for the assessment year 2010-11, wherein this Tribunal has deleted the penalty vide order dated 15.10.2018. He also pointed out that in the quantum proceedings, the Tribunal in Asstt. Year 2009-10 and 2010-11 has partly given relief and partly matter has been set aside to the AO after certain directions. Thus, the issue of levy of penalty is squarely earlier covered by the decision of the Tribunal.

5. On the other hand Ld. DR strongly relied upon the order of the Ld. CIT (A).

6. After considering the rival submission and on perusal of the relevant finding given in the impugned order as well as material preferred to before us, we find that in so far as payment made to foreign party on which no tax was deducted u/s 195, the same has been decided in favour of the assessee by the Tribunal. However, with regard to the deduction of tax u/s 194C, Tribunal has held that though the assessee was liable to deduct tax at source but had remanded back the matter to the AO with a direction that assessee may submit the requisite prescribed detail in specific manner before the AO in view of *proviso* to section 201(1). In any case in so far as levy of penalty u/s 271C is concerned the Tribunal has deleted the said penalty after observing and holding as under :-

“We have carefully considered the rival contentions and perused the orders of the lower authorities. On looking to the facts of the case as discussed by us in appeal of the assessee and revenue in 201(1) and 201(1A) proceedings above, we find that the belief of the assessee is bonafide and failure to deduct tax at source u/ s 194C of the Act is for a reasonable cause. The ld Assessing Officer could not show any contemptuous conduct on part of the assessee for non-deduction of tax at source. There could also not be any reason for non-deduction as assessee has made most of the payments to the public sector undertaking. The Hon'ble Supreme Court in the case of CIT Vs. Bank of Nova Scotia in 380 ITR 550 has approved the decision of the Hon'ble Delhi High Court wherein, it has been held that it is necessary to establish 'contumacious conduct' on the part of the assessee for failure to

deduct tax at source for levy of penalty u/s 271C of the act. In the present case, all the recipients have also furnished a certificate that they have received the payment. In view of this, we reverse the order of the Ld. CIT(A) confirming the levy of the penalty of Rs. 1152461/- u/s 271C of the Act in absence of any finding to show contumacious conduct on the part of the assessee. Ld. AO directed to delete the penalty levied u/s 271C of the Act. Accordingly, appeal of the assessee in ITA No. 1576/Del/2015 for AY 2010-11 is allowed.”

7. In view of the aforesaid order of the Tribunal, the penalty levied u/s 271C in the present appeals are also directed to be deleted on the same reason.

8. In the result both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 27th November, 2018.

Sd/-

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 27 /11/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi