

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.1691/Del./2015
Assessment Year 2011-2012

The JCIT (TDS), 13-A, Subhash Road, Dehradun.	vs.	Uttaranchal Health & Family Welfare Society, SCOVA (NRHM), Sahastradhara Road, Near I.T. Park, Dehradun. TAN MRTU00659B
(Appellant)		(Respondent)

For Revenue :	Shri Amit Katoch, Sr. D.R.
For Assessee :	-None-

Date of Hearing :	05.02.2019
Date of Pronouncement :	06.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A), Dehradun, Dated 30.12.2014, for the A.Y. 2011-2012, challenging the cancellation of penalty under section 271C of the I.T. Act, 1961.

2. Briefly the facts of the case are that verification proceedings were carried-out under section 133A of the Income Tax Act, 1961 on 20th December, 2011. The

assessee was found in default for not deducting tax at source on various payments made by it. Show cause notice under section 271C was issued as to why it should not be penalized for failure to deduct TDS during the year under appeal. The assessee filed written submissions in which it was explained that assessee-society was a unit of Uttarakhand Government formed by the Health Department of Uttarakhand for implementation of various schemes under the National Rural Health Mission Programme initiated by the Government of India in the States. All funds were received from the Government of India on the specific directions for expenditure on health related object. During the year under question, it made payment to various NGOs for implementation of various objects of the schemes on behalf of the State Government. All the organisation to whom payments were made were registered under the Societies Registration Act, 1860 and have exemption under section 12A/80G of the Income Tax Act, 1961. Income of these institutions were exempt from tax. It was submitted that the funds were provided by the Uttarakhand

Government as Grant-in-Aid for reimbursement of capital and actual operational expenditure on no profit no loss basis as per the MOU entered. Expenses were claimed by the NGOs on the basis of audit utilization certificates submitted by the Department. The fixed assets and infrastructure development from the Grant-in-Aid for capital expenses remained property of the Government of Uttarakhand. It was submitted that the services rendered by the NGOs did not fall under the professional category and did not come within the ambit of Section-194J. Even Section 194C was not attracted as all the funds were given against reimbursement of expenses on no profit no loss basis. It was submitted that on the basis of professional advise, the assessee was under strong bonafide belief that all the NGOs to whom Grant-in-Aid was given were claiming exemption under sections 12A and 80G of the Income Tax Act and were filing their return of income tax return with NIL tax and also since Grant-in-Aid was given for reimbursement of capital and actual operational expenditure on no profit no loss basis, no TDS was required

to be deducted. Thus, it was submitted that the assessee had a reasonable cause for non-deducting tax and there were no defiance of Law. The assessee relied upon several decisions in support of the contention.

3. The JCIT, however, did not accept the arguments advanced by the assessee on account of the fact that EMRI was providing technical and professional services and EMRI was taxable. Further, it was held that the payer, the payee and the payments are all covered within the scope of TDS provision. It was submitted that with regard to the NGOs even though they may not be taxable, there is no automatic exemption from TDS in respect of the payments to entities which may be registered under section 12A of the Income-Tax Act. The A.O. accordingly levied the penalty under section 271C of the Income Tax Act, 1961.

4. The penalty Order was challenged before the Ld. CIT(A) and same facts were reiterated. It was also submitted that the Ld. CIT(A) had allowed substantial relief to the assessee in appeal and this supported the plea of the assessee that it was not required to deduct tax at source.

The Ld. CIT(A) considered the explanation of assessee and concluded that there is a reasonable ground to hold that provisions of Sections 194J and 194C may not apply in the case of the assessee. Therefore, assessee has a reasonable cause and penalty was accordingly cancelled.

5. We have heard the Ld. D.R. and perused the findings of the authorities below. The Ld. D.R. filed the service report on record, according to which, notice for the date of hearing have been served by the Department on the assessee. The Ld. D.R. contended that the Ld. CIT(A) on quantum, decided the appeal of assessee under sections 201(1)/201(1A) of the Income Tax Act vide Order Dated 28.02.2013, copy of which is on record whereby the Order of TDS under section 201 have been confirmed by the Ld. CIT(A), however, on the alternate contention of assessee, the matter has been restored to the A.O. with a direction to the assessee to furnish documentary evidences in support of the contention that the recipients have paid the taxes. It was directed that A.O. will satisfy himself about the correctness of the same and modify the tax payment as required. The

interest would be charged accordingly for default on the part of the assessee. The Ld. D.R. submitted that violation of TDS provision is on account of non-deduction of TDS on a sum i.e., “the payments” and not “on the income”. Therefore, the findings of the Ld. CIT(A) are incorrect.

6. None appeared on behalf of the assessee, despite service of the notice.

7. We have heard the submissions of the Ld. D.R. Vide Order Dated 22.11.2018, one of the Department Appeal in ITA.No.1690/Del./2015 was heard and the present appeal was adjourned to 05.02.2019. The record reveals that the appeal of the Department in ITA.No.1690/Del./2015 for the A.Y. 2010-2011 have been dismissed by the Tribunal because of the low tax effect. In the present case, the A.O. passed the Order on account of default on the part of the assessee for non-deduction of the TDS vide order dated 9th January 2013 under section 201 vide Order Dated 09.11.2013 under sections 201(1)/201(1A) of the Income Tax Act. Copies of the Orders are available on record. The Ld. CIT(A) considered the issue of payment

made to EMRI and held that assessee was required to deduct tax at source on payments made to a EMRI. Similar view have been taken by the Ld. CIT(A) with regard to the payments made to other NGOs/Charitable Institutions and business entities. The action of the A.O. was thus confirmed in principle.

8. The alternative argument of the assessee was that the payees concerned had duly accounted for the impugned receipts in their return of income and paid the taxes as per Law. The alternative contention of assessee was accepted and assessee was directed to furnish documentary evidences in support of its contention before A.O. with a direction to A.O. to satisfy himself about the correctness of the claim of assessee and modify the tax demand accordingly. Interest was however chargeable for the default and it should be reviewed as per verification of the taxes paid by the recipients. The appeal of assessee was thus partly allowed. The Ld. D.R, therefore, rightly contended that there were no justification for the Ld. CIT(A) in the penalty matter to hold that assessee is not in default of

deduction of tax. Since the assessee is ex-parte, therefore, it is not clear whether any appeal has been filed by assessee against the Order of Ld. CIT(A) Dated 28.02.2013. Since Ld. CIT(A) vide Order Dated 28.02.2013, in principle, has confirmed the Order of the A.O. that assessee is liable to deduct TDS on the payments in question, therefore, Ld. CIT(A) should not have taken a contrary view in the penalty matter. Since the matter of quantum is restored to the A.O. for verifying the above claim of assessee, therefore, it would be reasonable and proper to restore the penalty matter also to the file of A.O. to pass the fresh Order in accordance with Law, after passing the Order under sections 201(1)/201(1A) of the Income Tax Act, 1961, as per the directions of the Ld. CIT(A). Whether assessee would have a reasonable cause shall be re-determined by the A.O, after giving reasonable, sufficient opportunity of being heard to the assessee. We, accordingly, set-aside the impugned Orders and restore the matter in issue to the file of A.O. with a direction to re-decide the penalty matter, after passing the Order under sections 201(1)/201(1A) of the Income Tax Act, 1961, as per

the directions of the Ld. CIT(A), Dated 28.02.2013. The A.O. shall give reasonable and sufficient opportunity of being heard to the assessee.

9. In the result, appeal of the Department is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 06th February, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi