

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "G", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3096/Del/2015  
Assessment Year: 2012-13

Jt. CIT(TDS), 13-A, Subhash Road, Dehradun	<b>Vs.</b>	Uttaranchal Health & Family Welfare Society, SCOVA (NRHM), Sahastradhara Road, Near I.T. Park, Dehradun.
<b>PAN :MRTU00659B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri N.K. Bansal, Sr.DR
Respondent by	None

Date of hearing	31.01.2019
Date of pronouncement	11.02.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the Revenue is directed against order dated 27/02/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-Dehradun [in short 'the Ld. CIT(A)'] for assessment year 2012-13 in relation to penalty levied under section 271C of the Income-tax Act, 1961 (in short 'the Act') for non-deduction of tax at source on various payments. The grounds of the appeal raised by the Revenue are reproduced as under:

- 1. The Ld.CIT(A) has erred in law and on facts in deleting the penalty U/s. 271C of the I.T. Act amounting to*

*Rs.36,69,836/- and holding that there is a reasonable cause for assessee for not deducting the tax at source.*

- 2. The learned CIT(A) has erred in law and on facts in deleting the penalty without mentioning the specific details of payments made to Government of India, Government of Uttarakhand Institution, different section of Uttaranchal Health & family Society and purchase of equipment of contingency expenses.*

**2.** We have heard Ld. Departmental Representative on the issue in dispute and have perused the relevant material on record, including the order of the lower authorities.

**3.** Brief facts of the case are that the assessee society was formed by the Health Department of Uttarakhand Government, under the direction of the Government of India for implementation of the various health-related scheme of National rural health Mission (NRHM). Entire funds for the program were received from the Government of India. In turn, the assessee society made payments to various Non-governmental Organization (NGOs) under Memorandum of Understanding (MOU) for implementation of various schemes on behalf of the State government. In the case of the assessee, a survey proceedings under section 133A of the Act was carried out on 20/12/2011, wherein it was observed that the assessee did not deduct tax at source on payment made to the NGOs. The Assessing Officer raised the liability under section 201(1)/201(1A) of the Act and referred the case to the Joint Commissioner of Income Tax (TDS) for levying penalty. Before the learned Joint Commissioner of Income Tax, it was submitted by the assessee that on the basis of the professional advise/opinion given under

strong bonafide belief that all the NGOs to whom grant-in-aid were given were duly showing the amount received in the regular return of income filed and they were claiming exemption under section 12A of the Act. It was contended that in view of the above facts, the assessee was of the belief that no tax was required to be deducted on the payments. The learned JCIT, however was of the view that provision of section 194C and 194J of the Act cast a duty upon the deductor to deduct TDS at the time of credit of such sum to the account of the contract or fee for professional/technical services and in failure to do so the assessee was liable for levy of penalty under section 271C of the Act, amounting to Rs.36,69,836/-.

**4.** The assessee filed appeal before the Ld. CIT(A) and filed detailed submissions. The Ld. CIT(A) has summarized the submission of the assessee in paras 6 to 8 of the impugned order. In the submission, it was contended that there was reasonable ground for not compliance with the provisions of the TDS , and in view of section 273B of the Act, levy of penalty was not warranted, if a reasonable ground exist for such a default. After considering, the submission of the assessee the Ld. CIT(A) deleted the penalty except penalty on the two payments made to the UHRC, Delhi. The finding of the Ld. CIT(A) on the issue in dispute is reproduced as under:

*“9. I have duly considered the facts & circumstances of the case. Besides the fact that the assessee is making the payments as grant in aid to the various NGOs on account of reimbursement of operational expenses and for setting up infrastructure to be vested in the Govt, of Uttarakhand, in my order of even date in the appeal against order under section 251, I have also observed that the assessee as been able to establish the fact that four of the NGOs with whom it transacted have accounted for the receipts from the assessee in their returns of income and have therefore, the assessee*

*cannot be held liable for short deduction of tax in the light of the judgement of the Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverages Pvt. Ltd. Vs. CIT 293 ITR 226 (SC). I have also observed that a large majority of the other payments made were to Govt, of India or Govt, of Uttarakhand institutions or different sections of the Uttaranchal Health & Family Welfare society or for purchase of equipments or contingency expenses which did not require deduction of tax at source. It has also been observed that in respect of, payments on account of contractual hiring and payments on account of printing etc. the tax is not to be deducted as per the provisions of section 194J but as per provision of section 194C, which the assessee had done. In the circumstances, applying the logic of the aforesaid judgments to the present case, it appears that there is reasonable cause within the meaning of section 273B for not deducting the tax at source or not deducting it @ 10% on all payments u/s 194J. The Assessing Officer should have considered the explanations of the assessee in this regard and not imposed the penalty mechanically. Accordingly, penalty u/s 271C is held to be unwarranted in the facts and circumstances of the case on such payments, as the assessee has reasonable ground to believe that it was not required to deduct tax at source or deduct tax at lesser rates. However, I have also observed from the agreement of the assessee society with UHRC Delhi that the payment made appears to be in the nature of a professional fee for consultancy and tax was required to be deducted on this payment. The assessee has also not been able to furnish any information with regard to payment made to Sarthak an NGO either in terms of its MoU or its accounts. Therefore, it cannot be said that the assessee had any genuine belief that it was not required to deduct tax in respect of these two payments and section 271C would seem to be attached in these two cases ..Hence penalty in respect of failure to deduct tax while making these two payments appears to be warranted and is confirmed. The A.O. may re-compute the amount of penalty keeping these observations in mind."*

**5.** We find that the Ld. CIT(A) has analyzed liability of deduction of TDS on all the transactions. He has referred his order in appeal under section 251 of the Act and observed that 4 NGOs have already accounted the income in their return of income and thus in view of the judgment of the Hon'ble Supreme Court in the case of Hindustan Coca-Cola Beverages Private Limited Vs. CIT 293 ITR 226(SC), the assessee cannot be held liable for no deduction or short deduction of tax. The Ld. CIT(A)

has further noted that most of the payments were made to government organizations, which are not liable for deduction of tax at source . He has also pointed out that on contractual hiring or payments on account of printing etc taxes were deducted under section 194C of the Act by the assessee. In view of the observation, the Ld. CIT(A) is of the view that the reasonable cause exist within the meaning of section 273B for not deducting tax at source or not deducting at the rate of 10% on all payments under section 194J of the Act. In case of the two payments made to the UHRC, Delhi, the Ld. CIT(A) has confirmed the levy penalty.

**6.** The Ld. DR has raised the issue before us that the Ld. CIT(A) has not pointed out which amount were of short deduction & which amount where the payee already paid taxes in return of income filed by them. We have also noticed that in the preceding assessment year, the Ld. CIT(A) sent the matter back for verification of amount considered by the payee in return of income filed by them. In the year under consideration also there are no evidence on record whether the payee have declared the payment made by the assessee in their return of income. In view of no clarity in the order of the Ld. CIT(A) on the issue of amount of liability under various TDS provisions and applicability of the decision of Hon'ble Supreme Court in the case of Hindustan Coca-cola Beverages P. Ltd. (supra), the Ld. CIT(A) is not justified in deleting the penalty for failure to deduct TDS by the assessee on the ground of existence of reasonable cause. As the assessee is not represented before us, we feel it appropriate to restore this matter to the file of the Ld. CIT(A) to pass a reasoned order and decide the issue in dispute afresh after verifying the quantum of

TDS under various TDS provisions & amount of payment declared by the payee in their return of income in accordance with law. The ground of appeal is accordingly allowed for statistical purposes.

**7.** In the result, the appeal of the Revenue is allowed for statistical purposes.

***Order is pronounced in the open court on 11<sup>th</sup> February, 2019.***

sd/-

sd/-

**[BHAVNESH SAINI]  
JUDICIAL MEMBER**

**[O.P. KANT]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> February, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (dictation through dragon software)	01.02.2019
2.	Date on which the draft of order is placed before the Dictating Member:	04.02.2019
3.	Date on which the draft of order is placed before the other Member:	
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been singed/pronounced by the Members:	
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	