

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 1456 & 1457/JP/2018
निर्धारण वर्ष / Assessment Years: 2014-15 & 2015-16

| | | |
|---|-------------|---------------------------|
| Jaipur National University, JNU Campus, Agra Bye Pass, Jagatpura, Jaipur. | बनाम Vs. | Addl.CIT(TDS), Jaipur. |
| PAN/TAN No.: JPRJ07404F | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by: Shri Vinod Kumar Gupta (CA)
राजस्व की ओर से / Revenue by : Smt. Roshanta Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 16/07/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the assessee against the separate orders of Id.CIT(A)-3 Jaipur dated 02/11/2018 for the A.Y. 2014-15 & 2015-16 in the matter of imposition of penalty U/s 271C of the Income Tax Act, 1961 (in short, the Act). In ITA No. 1456/JP/2018 for the A.Y. 2014-15, the assessee has raised following grounds of appeal:

- “1. Impugned order passed U/s 250/271C is bad in law and on facts being against the principal of natural justice and for many more other statutory reasons.

2. *Order passed u/s 271C by the Id. Addl.CIT(TDS) is barred by limitation and liable to be quashed. Further, CIT(A) erred by sustaining the same.*
3. *Under the facts and circumstances, Id. Addl.CIT (TDS) has erred by levying penalty of Rs. 1,85,680/- u/s 271C further, CIT(A) erred by sustaining the same. The penalty sustained is unjustified, illegal or excessive.*
4. *That the appellant craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.”*

2. Rival contentions have been heard and record perused. The facts in brief are that the assessee is a University, established through an Act passed by the State Legislature of Rajasthan namely, The Jaipur National University Act. A TDS Survey operation was carried out on the Assessee University on 12.08.2015. Thereafter consolidated order was passed for FY 2013-14 & 2014-15 created demand U/s 201(1) of Rs. 1,85,680/- and Rs. 2,32,889/-respectively dated 21.01.2016 for non-deduction of TDS on rent free accommodation provided to the employees of the Assessee University. Subsequently, assessee paid tax along with interest.

3. The A.O. also levied penalty U/s 271C of the Act which was confirmed by the Id. CIT(A), against which, the assessee is in further appeal before us. The assessee has taken ground with regard to limitation of order passed by the A.O. which was alleged to be beyond

limitation period, therefore, has no legs to stand. Plea of the assessee was also that there was reasonable cause for no deposit of TDS on the rent-free accommodation provided to the employees, therefore, no penalty should be imposed in view of provisions of Sec.273B of Act.

4. From the record, I found that the demand was created due to non-deduction of TDS on rent free accommodation/accommodation provided at concessional rates, to employees by the assessee. During the course of proceedings, it was explained that assessee was under the bonafide belief that accommodation provided is not perquisite u/s 17(2) of the Act as in absence of accommodation in university premises itself, the employees could have not performed duties and assignment in efficient manner. Therefore, providing accommodation is essential and part & parcel of the work assigned to them. The premises of the assessee are situated at a remote location near Jagatpura, Jaipur, where, there is no proper public transport connectivity and private transport is not available at all. Therefore, it is difficult for the professors and other staff to ensure their presence in time. Under such facts and circumstances, the assessee is obligated provide proper accommodation facilities so as to ensure that they can perform their duties in efficient manner.

5. I further observe that as soon as it came to the knowledge of assessee that rent free accommodation/accommodation provided at concessional rates is taxable as perquisite u/s 17(2) and TDS is liable to be deducted on notional value calculated under provision of Rule 3 of the Income Tax rules, assessee started deducting TDS on such perquisites i.e. from financial year 2015-16 onwards. Realizing the facts that assessee started deducting TDS of such perquisites, Ld. AO in the order passed u/s 201(1) & 201(1A) for financial year 2015-16 (up to 12.08.2015) did not made any addition. Thus, the only issue emerged was non-deduction of TDS on rent free accommodation/accommodation provided at concessional rates, which was due to bonafide belief of assessee. It is relevant to mention here that non-deduction of TDS has not resulted into any kind of benefit to the assessee, the non-deduction was only due to bonafide belief of the assessee. Further, that perquisite is taxable in the hands of employees, hence neither assessee get benefitted nor the employees. The TDS alongwith interest under consideration was also immediately deposited.

6. I found that the assessee was deducting TDS from salary without including perquisite in form of rent free/concessional accommodation, therefore, it is a case of short deduction of TDS. The assessee was not

willfully disobedient to the authority otherwise assessee would not have deducted TDS on entire salary being issue under consideration is just one item forming part of salary or any other payment. Therefore, as per the Id. AR, penalty u/s 271C cannot imposed. For this purpose reliance was placed on the judgment of 'D' Bench of ITAT, Kolkata in the case of Shapoorji Pallonji & Co. Private Limited V/S. JCIT(TDS), Kolkata, I.T.A. No. 413 & 414/Kol/2016 dated 29.11.2017(Case Law # 4) , wherein, it is held that:-

"6. *We have given a very careful consideration to the rival submissions. We are of the view that in the present case there was only a short deduction of tax at source and it was not a case of non deduction of tax at source. It is also seen that the short deduction of tax at source was due to a wrong nomenclature under which the accounts department classified the payment for professional services as payment made to a contractor for carrying out any work When the mistake was pointed out, the assessee accepted the mistake to the extent that the stand taken by the revenue is correct and immediately paid the tax that was not deducted at source by applying the proper rate of TDS. The plea of the assessee, in our view, constitutes reasonable cause for the failure contemplated u/s 271C of the Act. The judicial decisions cited on behalf of the assessee supports the plea taken by the assessee for not imposing penalty u/s 271C of the Act. We therefore cancel the penalty to the extent sustained by CIT(A) and allow both the appeals of the assessee.*"

7. It is also clear from the record that the assessee has compiled the TDS provision on almost all payments or heads except not including said

perquisite in form of rent free accommodation in salary due to bonafide belief, which itself shows that assessee is law abiding and not having contumacious conduct, hence penalty should not be sustained. In this regard, I further place our reliance on the decision of Hon'ble Supreme Court in case of Comm. of Income Tax Vs. Bank of Nova Scotia, Civil Appeal No. 1704 of 2008, vide order dated 07.01.2016 (Case Law # 5) has confirmed the order of ITAT and the ITAT in its order has held that:-

"11. We have carefully considered the rival submissions. In the instant case we are not dealing with collection of tax u/s 201(1) or compensatory interest u/s 201(1A). The case of the assessee is that these amounts have already been paid so as to end dispute with Revenue. In the present appeals we are concerned with levy of penalty u/s 271-C for which it is necessary to establish that there was contumacious conduct on the part of the assessee. We find that on similar facts Hon'ble Delhi High Court have deleted levy of penalty u/s 271-C in the case of M/s. Itochu Corporation, reported in 268 ITR 172 (Del) and in the case of CIT Vs. Mitsui & Company Ltd. reported in 272 ITR 545. Respectfully following the aforesaid judgments of Hon'ble Delhi High Court and the decision of the ITAT, Delhi in the case of Television Eighteen India Ltd., we allow the assessee's appeal and cancel the penalty as levied u/s 271C."

8. In view of the above facts and circumstances and keeping in view the provisions of Section 273B of the Act, I hold that there was a reasonable cause for the failure of the assessee, therefore, no penalty

should be imposed. For this purpose, reliance is placed on the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd. Vs CIT (2012) 348 ITR 306, Hon'ble Karnataka High Court decision in the case of CIT Vs. Filtrex Technologies (P) Ltd. 232 Taxman 0811 and the Hon'ble Delhi High Court in the case of Woodward Governors India (P) Ltd. Vs CIT (2001) 118 Taxman 433 (Delhi).

9. Furthermore, the Hon'ble Supreme Court in the case of CIT Vs. M/S. Eli Lilly & Company (India) Pvt. Ltd. & Ors., Civil Appeal No. 5114/2007, Order Date 25th March, 2009 held that:-

"(iv) On the Scope of Section 271C read with Section 273B:-

35. Section 271C inter alia states that if any person fails to deduct the whole or any part of the tax as required by the provisions of Chapter XVII-B then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct. In these cases we are concerned with Section 271C(1)(a). Thus Section 271C(1)(a) makes it clear that the penalty leviable shall be equal to the amount of tax which such person failed to deduct. We cannot hold this provision to be mandatory or compensatory or automatic because under Section 273B Parliament has enacted that penalty shall not be imposed in cases falling there under Section 271C falls in the category of such cases. Section 273B states that notwithstanding anything contained in Section 271C, no penalty shall be imposed on the person or the assessee for failure to deduct tax at source if such person or the assessee proves that there was a reasonable cause for the said failure. Therefore, the liability to levy of

penalty can be fastened only on 44 the person who does not have good and sufficient reason for not deducting tax at source. Only those persons will be liable to penalty who do not have good and sufficient reason for not deducting the tax. The burden, of course, is on the person to prove such good and sufficient reason. In each of the 104 cases before us, we find that non-deduction of tax at source took place on account of controversial addition. The concept of aggregation or consolidation of the entire income chargeable under the head "Salaries" being exigible to deduction of tax at source under Section 192 was a nascent issue. It has not be considered by this Court before. Further, in most of these cases, the tax- deductor- assessee has not claimed deduction under Section 40(a)(iii) in computation of its business income. This is one more reason for not imposing penalty under Section 271C because by not claiming deduction under Section 40(a)(iii), in some cases, higher corporate tax has been paid to the extent of Rs. 906.52 Lacs (see Civil Appeal No. 1778/06 entitled CIT v. The Bank of Tokyo-Mitsubishi Ltd.). In some of the cases, it is undisputed that each of the expatriate employees have paid directly the taxes due on the foreign salary by way of advance tax/self-assessment tax. The tax-deductor- assessee was under a genuine and bona fide belief that it was not under any obligation to deduct tax at source from the home salary paid by the foreign company/HO and, consequently, we are of the view that in none of the 104 cases penalty was leviable under Section 271C as the respondent in each case has discharged its 45 burden of showing reasonable cause for failure to deduct tax at source"

10. The Hon'ble Karnataka High Court in the case of CIT Vs. The Rajajinagar Co-operative bank Limited, ITA 86 of 2006, order dated 20th July, 201 held that:-

"10. *In the instant case, the assessee is a Cooperative Bank. Clause 5 of sub-section (3) of Section 194A expressly exempts the Bank from deducting the tax at source on interest payable by the Bank to its members and other Cooperative Societies. As stated by the assessee, they did not properly construe this provision. By misconstruing this provision they also did not deduct tax from the interest payable to nonmembers. That is the bonafide mistake which they have committed Their bonfides is demonstrated to the effect that once in a survey the said mistake was notice and pointed out immediately they have paid the tax with interest. Therefore, in the light of this undisputed facts of this case, when the Appellate Commissioner and the Tribunal held that the same constitutes a reasonable cause and when the same is not shown to be false, the assessee has satisfied the requirement of Section 273B, in which event, no penalty shall be imposable. Therefore the order passed by the Tribunal and the appellate Commissioner is valid and legal and do not suffer from any legal infirmity which calls for interference. Accordingly the substantial question of law framed is answered in favour of the assessee and against the Revenue."*

11. Applying the proposition of law laid down in above judicial pronouncements, I am inclined to agree with Id AR Sri Vinod Kumar Gupta that there is no merit in penalty so imposed U/s 271C of the Act.

12. The facts and circumstances and the grounds of ITA No. 1457/JP/2018 for the A.Y. 2015-16 are similar to the appeal for the A.Y. 2014-15, therefore, the findings given in the appeal for A.Y. 2014-15 shall apply mutatis mutandis in this year also.

13. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 16th July, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 16th July, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Jaipur National University, Jaipur.
2. प्रत्यर्थी / The Respondent- The Addl.CIT(TDS), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1456 & 1457/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar