

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.939/Del/2018
Assessment Year : 2010-11**

District Manager, HAFED, Site No.01, Opp.Main Market, Sector-5, Kurukshetra, Haryana, PAN-AAAJH0022R.	vs	JCIT, TDS Range, Karnal, Haryana.
APPELLANT		RESPONDENT
Appellant by	Sh. Kulwant Rai Chhabra, Adv.	
Respondent by	Ms. Alka Gautam, Sr.DR	
Date of Hearing	24.08.2021	
Date of Pronouncement	31.08.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the assessee pertaining to assessment year 2010-11 is directed against the order of Ld. CIT(A), Karnal dated 16.11.2017. The assessee has raised following grounds of appeal:-

1. *“Order passed by Ld.JCIT TDS and CIT(A) are illegal, arbitrary and bad in law.*
2. *On facts and in circumstances of the case Ld. JCIT and CIT(A) were not justified in imposing penalty of Rs.6,32,267/- u/s 271C of the I.T.Act on the default which was bonafide and of technical nature.*
3. *On facts and in circumstances of the case Ld. JCIT and CIT(A) were not justified in imposing penalty of Rs.6,32,267/- u/s 271C of the I.T.Act on the default which was due to late deposit of TDS and the same was deposited during the same Financial Year.”*

2. The only effective ground is against sustaining the penalty of Rs.6,32,267/- imposed u/s 271C of the Income Tax Act, 1961 ("the Act").

3. Facts giving rise to the present appeal are that "TDS" inspection was carried out on 04.02.2010 at the premises of the assessee. Thereafter, order u/s 201(1)/201(1A) of the Act was passed on 24.02.2010 declaring assessee's in default for non-deduction of tax at source on payment of rent. The Assessing Officer, thereafter, initiated the penalty proceedings u/s 271C of the Act, by issuing show cause notice dated 19.10.2011. In response thereto, the Authorized Representative of the assessee appeared and filed its reply. However, the explanation of the assessee was not found acceptable by the Assessing Officer and he proceeded to impose penalty of Rs.6,32,267/- u/s 271C of the Act.

4. Aggrieved against this, the assessee preferred the present appeal before Ld.CIT(A) who also sustained the penalty and dismissed the appeal of the assessee.

5. Aggrieved against this, the assessee preferred appeal before this Tribunal.

6. Ld. Counsel for the assessee reiterated the submissions as made before Ld.CIT(A). Ld. Counsel for the assessee submitted that non-deduction of tax was not deliberate. It was under the bonafide belief that the assessee was not liable to deduct tax. It is submitted that the payment was made for booking of space only. Hence, it was believed that no tax is required to be paid on such payment. He further submitted that the assessee being instrumentality of Government would not evade tax. Ld. Counsel for the assessee submitted as

soon as it cause to the notice of the assessee that the assessee was required to deduct tax. The assessee deposited the entire tax and interest thereon in the Government account. Ld. Counsel for the assessee further placed reliance on the judgement of Hon'ble Supreme Court in the case of *Hindustan Coca Cola Beverages Pvt.Ltd. vs CIT [2007] 163 Taxman 355 (SC)* to buttress the contention that the tax alongwith interest thereon, has been paid. Moreover, the deductee has disclosed the amount in its return of income. In these circumstances, no penalty ought to have been imposed on the assessee. He further submitted that the authorities below have not considered the case law as relied on by the Ld. Counsel for the assessee during the first appellate proceedings.

7. Per contra, Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. Ld. Sr. DR submitted that only explanation offered by the assessee is with regard to payment made to the owner of the spaces in the nature of advance for booking of space. The assessee was required to deduct tax on payment of Rs.27,90,240/- as made to M/s Haryana Warehousing Corporation. Hence, the Assessing Officer has rightly held that the assessee in default and proceeded to impose penalty u/s 271C of the Act. The entire story as now stated by Ld. Counsel for the assessee is after thought to avoid the rigours of section 271C of the Act. The assessee has grossly failed to prove its bonafide for non-deduction of tax on source on the payment made which was essentially advance rent.

8. We have heard contentions of both Authorized representatives and perused the material available on record. The only explanation for non-

deduction of tax by the assessee is that the amount paid to M/s. Haryana Ware Housing Corporation was booking advance for the space. Further, it is also stated that under the bonafide belief that no tax is liable to be deducted on such amount, the assessee did not deduct tax. When it came to the notice of the assessee, the entire amount alongwith interest thereon was duly deposited with the Government account. In these facts and circumstances, it was argued that there is no loss of revenue hence, penalty u/s 271C ought not to have been imposed and sustained by the Ld.CIT(A). It is argued that the assessee has demonstrated bonafide reason for non-deduction of tax, therefore, authorities below ought not to have imposed the penalty in terms of section 273B of the Act. Ld. Counsel for the assessee has also placed reliance on the judgement of *Hindustan Coca Cola Beverages Pvt.Ltd. vs CIT* (supra) to buttress the contention where the assessee has deposited tax and interest thereon and disclosed the income in the return of income, no disallowance is called for. It is further stated that Haryana Ware Housing Corporation has also disclosed this income and due taxes have already been paid.

8.1. Looking to the peculiarity of the case and coupled with the fact that due taxes alongwith interest thereon, have been deposited in the Government account. This fact is not controverted by the Ld. Departmental Representative. Under the facts and circumstances of the present case, the assessee has demonstrated the bonafide for non-deducting the tax. We, therefore, direct the Assessing Officer to delete the penalty of Rs.6,32,267/- imposed u/s 271C of the Act. Thus, grounds raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 31st August, 2021.

Sd/-

(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI