

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SHRI I.C.SUDHIR, JUDICIAL MEMBER  
AND SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 3514/Del/2013  
AY: 2009-10**

ACIT, CIT (TDS) vs. Bharat Sanchar Nigam Ltd.  
Ghaziabad O/o GPO Compound  
Meerut

PAN: AABCB 5576 G

**(Appellant)**

**(Respondent)**

**Appellant by** : Shri R.K.Garg, D.R.

**Respondent by** : Sh. Anurag Rishi, Adv.

**ORDER**

**PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER**

This is an appeal filed by the Revenue directed against the order of Ld.CIT(A), Meerut dated 25.3.2013 pertaining to the Assessment Year (hereinafter referred to as the A.Y.) 2009-10 on the following ground.

*“The CIT(A) has erred in law and on facts in deleting the penalty u/s 271(1)(C) of the Act for the A.Y. 2009-10 for Rs.15,74,837/- without appreciating the facts that the assessee had not deducted the TDS on sale to franchisees and also on counter sales while these short deductions were confirmed by the CIT(A) in a separate order.”*

**2.** We have heard Shri R.K.Garg, Ld.D.R. on behalf of the Revenue and Shri Anurag Rishi, the Ld.Counsel for the assessee.

**2.1.** On a careful consideration of the facts and circumstances of the case, orders of lower authorities and case laws cited, we hold as follows.

**3.** The issue on which the Assessing Officer (hereinafter referred to as the AO) levied penalty u/s 271(1)(C) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), is that the assessee has not deducted tax at source u/s 194H of the Act @ 10% + SC&EC on trade discount/commission allowed to franchisees and to customers to whom direct counter sales of rechargeable prepaid vouchers have been made. This view was taken consequent to the order of the ITAT, Cochin Bench in the case of Vodafone Essar Cellular vs. ACIT dt. 30.4.2009. In our view this issue of tax deducted at source u/s 194H of the Act on trade discount offered to customers and franchisees is a debatable issue. There are conflicting views on this issue. The Jaipur Bench of the ITAT in the case of M/s Tata Tele Services Ltd. vs. ITO (2015)-TIOL-324-ITAT-Jaipur, on similar facts held that the assessee need not deduct TDS u/s 194H of the Act.

**3.1.** The Hon'ble Supreme Court in the case of CIT vs. Eli Lilly and Co. (India) Pvt.Ltd. (2009) 312 ITR 225 (SC) at page 251, para 36 held as follows.

*“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 S.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 u/s 273B Parliament has enacted that penalty shall not be imposed in cases falling there under, S.271C falls in the category of such cases. Section 273B states that not, withstanding 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 persons who do 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.”*

The Explanation furnished by the assessee is in our view bonafide. The Revenue could not establish that there was contumacious conduct on the part of the assessee.

**3.2.** Applying the propositions laid down in the case of CIT vs. Eli Lily and Co. (India) Pvt.Ltd. (supra), to the facts of the case on hand we uphold the order of the Ld.CIT(A) that no penalty can be levied u/s 271C under the facts and circumstances of the case.

**4.** In the result the appeal of the Revenue is allowed.

Order pronounced in the Open Court on 24<sup>th</sup> May, 2016.

Sd/-  
**(I.C.SUDHIR)**  
**JUDICIAL MEMBER**

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 24<sup>th</sup> May, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar