

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'H' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.6734/Del/2019, A.Y. 2014-15

ITA No.6735/Del/2019, A.Y. 2016-17

ITA No.6736/Del/2019, A.Y. 2017-18

M/s. TULIP INFRATECH PRIVATE LIMITED 1201-1204, Indraprakash Building, Barakhamba Road, Connaught Place, New Delhi-110001 PAN : AACCT3755E	Vs.	Addl. CIT, Range-76, New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Salil Aggarwal, Sr. Advocate and Sh. Shaliesh Gupta, Advocate
Revenue by	Sh. Parikshit Singh, Sr. DR

Date of hearing:	21.06.2022
Date of Pronouncement:	06.07.2022

ORDER

PER ANUBHAV SHARMA, JM:

These appeals have been filed by the assessee against order dated 28.06.2019 in appeal no. 166/18-19/374/17-18, 113/18-19/375/17-18,

114/18-19/376/17 in assessment year 2014-15, 2016-17 & 2017-18 respectively passed by Commissioner of Income Tax (Appeals)-31, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 12.01.2018 u/s 271C of the Income Tax Act, 1961 passed by ACIT, New Delhi (hereinafter referred to as the Assessing Officer 'AO').

These appeals raise similar grounds so to avoid contradictory findings. They are adjudicated by this common order and for convenience the facts and grounds of AY 2014-15 are being taken on record.

2. The facts in brief are that a survey u/s 133A was carried out at the business/office premises of the Haryana Urban Development Authority (HUDA) by the DCIT (TDS), Panchkula who forwarded the details and findings of the survey. On detailed examination of the survey report and verification of the facts of the case of assessee, the Ld. AO noticed that TDS was not made on payment of External Development Charges (EDC) and accordingly penalty u/s 271C was initiated. In response, the assessee filed stating that provisions of section 194C. were not applicable on payment, of EDC because the payment was made to the Government and not to the HUDA. The Ld. Ld. AO examined the submission of assessee and mentioned that in the present case, the assessee has paid EDC to HUDA for carrying out civil works, construction work and other related works. The Ld. AO noticed that demand drafts for EDC payment were issued in the name Chief Administrator, HUDA. The Ld. AO further mentioned that HUDA Develops Urban Infrastructure for which it was receiving EDC charges from various parties. Although EDC was shown as Current liability in the balance sheet by the HUDA, but in the Notes to the accounts forming part of balance

sheet shows that EDC are received for execution for various External Development works and as and when development work is carried out, the EDC liabilities are reduced accordingly. Then the Ld. AO examined business model of HUDA and on the basis of statement recorded during the course of survey of Sh. Ram Kumar, Senior Ld. AO, HUDA, he noticed that HUDA was engaged in acquiring land, developing it and finally handing over to the customers for a price. The lands were developed by HUDA though the same were identified and acquired by Urban Estate Department, Haryana Government, but the ownership and possession was transferred to HUDA for payment of consideration. The Ld. AO also examined scope of External Development Work (EDW) as per Haryana Development and Regulation of Urban Area Act, 1975 which includes water supply, sewerage, drains, necessary provision for treatment and disposal of sewage, sullage and storm water, roads, electrical works, solid waste management and disposal etc. The EDC charges are fixed by HUDA from time to time by issuing letters/circulars. It was noted by the Ld. AO that all the demand drafts for EDC charges were drawn in favour of Chief Administrator, HUDA though routed through Director General, Town and Country Planning, Government of Haryana. In view of the above mentioned facts, the Ld. AO was of the view that HUDA is taxable entity who was rendering services for External Development Work and receiving the consideration for such services. Accordingly, in view of Circular No. 681 of CBDT dated 08/03/1994, the TDS was applicable on EDC charges. Thereafter, the Ld. AO has reproduced various circulars dated 15.01.2002, 08.07.2002, 25.09.2009 and 14.08.1996 issued by Accounts Officer, for Chief Controller of Finance, HUDA, Panchkula vide which EDC charges were fixed. Finally, the Ld. AO was of the view the assessee has paid EDC for the works carried out by

HUDA and hence the same was liable for TDS u/s 194C Ld. AO also noticed that certain tax deductor sought clarification regarding applicability of TDS provisions on EDC charges paid to HUDA and the CBDT vide OI in F.No. 370133/37/2017-TFL dated 23/12/2017 has clarified that when EDC is paid to Government of Haryana, the same would be exempt from TDS provisions. It was further clarified by the CBDT that in the instant case, it appears that the developer has made the payment in the nature of EDC not to the Government but to the HUDA which is a Development Authority of State Government of Haryana and is a taxable entity under the Income Tax Act, 1961 and hence TDS provisions would be applicable on EDC payable by the developer to HUDA.

2.1 Accordingly after referring to the provisions of section 271C and the decisions of the various authorities particularly the decision of Hon'ble High Court in the case of **CIT(TDS) vs M/s IKEA Trading Hong Kong Ltd. in 179 Taxman 309 (Del)**, the Ld. AO has held that there is no time limit for initiation of penalty, and for imposition of penalty u/s 271C, order u/s 201(1)/201(1A) is not necessary. Since there was no reasonable cause within the meaning of section 273B for non deduction of TDS on EDC, the Ld. AO imposed penalty and aggrieved assessee had filed appeal before the Ld. CIT(A) which was dismissed.

3. Now before the Tribunal the assessee has come in appeal raising following grounds :-

“1. That the learned Commissioner of Income Tax (Appeals) has grossly erred both in law and on facts in sustaining a penalty of a sum of Rs. 14,95,900/-, on account of non-deduction of tax on payments being made for External Development Charges (EDC)

paid / payable to HUDA and while sustaining the instant penalty, the learned CIT (A) has proceeded on irrelevant and extraneous considerations, relying on case laws not applicable to the facts of the case of assessee - appellant and as such the penalty so sustained is wholly untenable either on facts or in law.

1.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the fact that payment of EDC by assessee - appellant is to the State Government and that too for creation of fund which is to be utilized by the said government for urban development and creation of infrastructure and there is no requirement to deduct TDS on said payments under section 196 of the Act and as such, penalty so imposed needs to be deleted.

1.2 That the adverse findings recorded by the learned AO and Commissioner of Income Tax (Appeals) are perverse and have been recorded with preconceived notions and without considering the submissions/evidences/material produced on record and also without providing fair and proper opportunity of being heard, hence such findings are vitiated and deserves to be deleted.

1.3 That without prejudice to the above, the learned CIT (A) has failed to appreciate the fact that, if the income of HUDA is assessed to tax and the said payment with regards to EDC have also been brought to tax in the hands of HUDA, then there could be no liability to deduct tax at source in the hands of assessee, as due tax had been imposed on deductee i.e. HUDA.

2. That the penalty sustained by learned Commissioner of income Tax (Appeals) is entirely arbitrary and based on mere assumptions, and assertions, without there being any supporting evidence, hence the penalty is per-se legally invalid and therefore, vitiated.”

4. Heard and perused the record.

5. On behalf of the assessee the Ld Sr. Advocate submitted that the payments made to HUDA were only for the purpose of facilitating the payments due on account of EDC charges towards Town and Country Planning, Government of Haryana. It was submitted that when the payments are made to the Government or local authority, no tax is required to be deducted. Ld. Sr. Counsel specially relied a clarification dated 19.06.2018 issued by Town and Country Planning, Government of Haryana available on page no. 1 of the paper book to impress that HUDA is merely executing agency and there was specific direction of the State Government of Haryana, Directorate of Town and Country Planning, Haryana directing that no TDS is to be deducted out of payment made to Government for EDC. He also referred to judgment of ITAT Delhi Bench in **ITA no. 6907/Del/2019 M/s. Perfect Constech (P) Ltd. vs. Additional Commissioner of Income Tax & ITA No. 5805, 5806, 5349/Del/2019 RPS Infrastructure Ltd. vs. ACIT** to contend that in regard to similar matter the co-ordinate Bench has held that there was no default of non-deduction of TDS in regard to payments made to HUDA on account of EDC charges.

5.1 On the other hand, Ld. DR relied the Circular of CBDT whereby directions have been issued for deduction of TDS in payments made to authorities like HUDA. It was submitted that HUDA was neither Government department nor a local authority. Therefore any payment being made to it was to be subjected to TDS u/s 194C of the Act.

6. Giving thoughtful consideration to the matter on record, the clarification dated 19.06.2018 available on page no. 1 of the paper book makes it very obvious that receipts on account of EDC are being deposited

in the Consolidated Fund of the State, accordingly directions were issued to colonizer like present assessee, to not deduct TDS.

7. The Co-ordinate Benches in M/s. Perfect Constech P. Ltd. case and ITA No. 5805, 5806, 5349/Del/2019 title of the case RPS Infrastructure Ltd. vs. ACIT have held that assessee was not required to deduct tax at source at the time of payment of EDC.

7.1 As for convenience the relevant findings at para no. 5 in **M/s. Perfect Constech Pvt. Ltd** (supra) is reproduced;

“5. We have heard the rival submissions and have also perused the material on record. It is seen that in Para 4.3.2, subparagraph (iv) of the order passed u/s 271C of the Act, the LD.AO has himself noted that the demand draft of the EDC amounts are drawn in favour of the Chief Administrator, HUDA though routed through the Director General, Town and Country Planning, Sector-18, Chandigarh. He has also referred to the notes to accounts to the financial statements of HUDA wherein it has been stated that “other liabilities also include external development charges received through DGTCP, Department of Haryana for execution of various EDC works. The expenditure against which have been booked in Development Work in Progress, Enhancement compensation and Land cost.” Undisputedly, the payment of EDC was issued in the name of Chief Administrator, HUDA. It is also not in dispute that HUDA has shown EDC as current liability in the balance sheet, but in the ‘Notes’ to the Accounts Forming part of the Balance Sheet, it has been shown that EDC has been received for execution of various external development works

and as and when the development works are carried out, the EDC's liabilities are reduced accordingly. It is also not in dispute that HUDA is engaged in acquiring land, developing it and finally handing it over for a price. It is also not in dispute that EDC is fixed by HUDA from time to time. However, the fact of the matter remains that payment has been made to HUDA through DTCP which is a Government Department and the same is not in pursuance to any contract between the assessee and HUDA. Thus, the payment of EDC is not for carrying out any specific work to be done by HUDA for and on behalf of the assessee but rather DTCP which is a Government Department which levies these charges for carrying out external development and engages the services of HUDA for execution of the work. Therefore, it is our considered view that the assessee was not required to deduct tax at source at the time of payment of EDC as the same was not out of any statutory or contractual liability towards HUDA and, therefore, the impugned penalty was not leviable. We note that similar view has been taken by the Co-ordinate Benches of ITAT Delhi in the cases of Santur Infrastructure Pvt. Ltd. vs. ACIT in ITA 6844/Del/2019 vide order dated 18.12.2019, Sarv Estate Pvt. Ltd. vs. JCIT in ITA No.5337 & 5338/Del/2019 vide order dated 13.09.2019 and Shiv Sai Infrastructure (Pvt.) Ltd. vs. ACIT in ITA No.5713/Del/2019 vide order dated 11.09.2019. A similar view was also taken by the Co-ordinate Bench of ITAT Delhi in case of R.P.S Infrastructure Ltd. vs. ACIT in 5805, 5806 & 5349/Del/2019 vide order dated 23.07.2019. Therefore, on an identical facts and respectfully following the orders of the Co-ordinate Benches as aforesaid, we hold that the impugned penalty u/s 271C of the Act is

not sustainable. The order of the Ld. CIT (A) is set aside and the penalty is directed to be deleted.”

7.2 Similarly para no. 11 in **the case RPS Infrastructure Ltd (Supra)** is also reproduced below;

“11. We have heard the rival submissions, perused the relevant findings given in the orders passed by the authorities below and the various judgments and materials relied upon by both the sides. On going through the facts, we note that dispute is with regard to non-deduction of tax in respect of payment of EDC charges made by the assessee to HUDA. As per the LDAO, HUDA is neither a local authority nor Government, thus, the payments made to it by the assessee on account of EDC charges were liable for TDS under section 194C of the Act. Since, assessee has failed to deduct the TDS; therefore, it is liable for penalty under section 271C of the Act. On the other hand, the case of the assessee is that obligation to pay EDC charges is arising out of the license granted by DTCP and these payments are to be made for obtaining the license and as per the direction of the DTCP, the same have been paid to HUDA. Further, these payments are not in the nature of payment or in pursuance of works contract. There is no privity of contract between the assessee and the HUDA. On the contrary, the agreement is between Assessee Company and the DTCP which admittedly is a Government Department as agreement has been signed by DTCP on behalf of Governor of Haryana. We are of the view that we need not go in all these issues. From the facts, it is evident that the payments have been made by the assessee to HUDA which is an authority of Haryana

*Government created by enactment of Legislature for carrying out developmental activities in the state of Haryana. Such Authorities admittedly are not in the category of local authority or Government. These payments were made during the year 2013-2016 and during this period, that is, prior to issue of CBDT Circular dated 23.12.2017, there was no clarity as regard the deduction of tax on these payments. We are of the view that the assessee was under a bonafide belief that no tax is required to be deducted at source on such payments, firstly, for the reason that agreement was between DTCP, who is Governmental authority and licence was granted by the Government and EDC charges was directed to be paid to HUDA, therefore, this could led to reasonable cause that TDS was not required to be deducted; Secondly, DTCP had issued a clarification dated 29.06.2018 to the effect that no TDS was/is required to be deducted in respect of payments of EDC and this clarification issued by DTCP, covers both past and future as the words used are was/is. This shows that Governmental authority itself has demanded not to deduct TDS. In case even if tax was required to be deducted on such payment but not deducted under a bonafide belief then no penalty shall be leviable under section 271C of the Act as there was no contumacious conduct by the assessee. Our view is fully supported from the judgment of the Hon'ble Supreme Court in the case of **Commissioner of income tax vs. Bank of Nova Scotia, 380 ITR 550**, wherein the Hon'ble Court has held as under :*

“2. The matter was pursued by the Revenue before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal vide order dated 31.03.2006 entered the following findings:

"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 Itochu Corporation 268 ITR 172 (Del) and in the case of CIT v. Mitsui & Company Ltd. 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 271-C."

3. Being aggrieved, the Revenue took up the matter before the High Court of Delhi against the order of the Income Tax Appellate Tribunal. The High Court rejected the appeal only on the ground that no Substantial question of law arises in the matter.

4. On facts, we are convinced that there is no substantial question of law, the facts and law having properly and correctly

been assessed and approached by the Commissioner of Income Tax (Appeals) as well as by the Income Tax Appellate Tribunal. Thus, we see no merits in the appeal and it is accordingly dismissed.”

8. As a wholesome effect of above, the Bench is of considered opinion that levy of penalty u/s 271C of the Act cannot be sustained. The grounds raised in the appeals are allowed. Appeals are accordingly allowed. The impugned orders are set aside.

Order pronounced in the open court on 6th July, 2022.

Sd/-

**(G.S.PANNU)
PRESIDENT**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 6 .07.2022

Binita, SR.P.S

Copy forwarded to:

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2. Respondent
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**ASSISTANT REGISTRAR
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