

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

AND

SHRI [Dr.] B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos. 5871 & 5872/Del/2019
निर्धारणवर्ष/Assessment Years: 2016-17 & 2017-18

TDI Infrastructure Ltd., 10, Shaheed Bhagat Singh Marg, Connaught Place, New Delhi - 110 001.	<u>बनाम</u> Vs.	Addl. CIT, Range : 76, New Delhi.
PAN No. AAACI5799P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारितीकीओरसे / Assessee by :	Shri Shailesh Gupta, Advocate;
राजस्वकीओरसे / Department by :	Shri M. Baranwal, [CIT] - D. R.;

सुनवाईकीतारीख/ Date of hearing :	05.09.2022
उद्घोषणाकीतारीख/Pronouncement on :	05.09.2022

आदेश / O R D E R

PER C. N. PRASAD, J.M.

1, These two appeals are filed by the assessee against the common order of Ld. Commissioner of Income Tax (Appeals)-31, New Delhi

[hereinafter referred to CIT (Appeals)] dated 16.05.2019 for the Assessment Years 2016-17 and 2017-18 in sustaining the penalty levied under section 271C of the Income Tax Act, 1961 (the Act).

2. The assessee in its appeals raised the following common grounds of appeal:-

“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.2,124/-, 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 s<: 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.”

3. The Id. Counsel for the assessee, at the outset, submits that the issue as to whether penalty under section 271C of the Act is leviable for non-deduction of tax on payments made for External Development Charges (EDC) to HUDA came up for hearing before the Tribunal in assessee's own case for the assessment year 2014-15 in ITA. No. 6653/Del/2019 and the Tribunal by order dated 06.07.2022 following the decision of the co-ordinate bench in the case of M/s. Perfect Constech (P) Ltd. Vs. Addl. CIT in ITA. No. 6907/Del/2019 and RPS Infrastructure Ltd. Vs. ACIT in ITA. Nos. 5805, 5806 and 5349/Del/2019 held 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, penalty under section 271C of the Act was not leviable. Copy of the order of the Tribunal for the assessment year 2014-15 in ITA. No. 6653/Del/2019 dated 06.07.2022 was placed on record by the Id. Counsel.

4. The Id. DR fairly submits that the issue in appeal has been decided in favour of the assessee by the Tribunal in assessee's own case.

5. On hearing the rival contentions and perusing the orders of the authorities below and the order of the Tribunal, we find that in assessee's own case the Tribunal for the assessment year 2014-15 held that TDS is not required to be made on the EDC charges paid to HUDA and consequently no penalty under section 271C of the Act is attracted. Further the Tribunal while holding so observed as under:-

“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 LD.AO, 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.”

6. Facts being identical, respectfully following the decision of the Tribunal in assessee’s own case, we delete the penalty levied under section 271C of the Act. Grounds raised by the assessee are allowed.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on : 05/09/2022

Sd/-
(**B.R.R. KUMAR**)
ACCOUNTANT MEMBER

Sd/-
(**C. N. PRASAD**)
JUDICIAL MEMBER

Dated : 05/09/2022

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	05.09.2022
Date on which the typed draft is placed before the dictating member	05.09.2022
Date on which the typed draft is placed before the other member	05.09.2022
Date on which the approved draft comes to the Sr. PS/ PS	05.09.2022
Date on which the fair order is placed before the dictating member for pronouncement	05.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	05.09.2022
Date on which the final order is uploaded on the website of ITAT	05.09.2022
Date on which the file goes to the Bench Clerk	05.09.2022
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	