

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2864/Del/2019
[Assessment Year: 2014-15]**

PVR Ltd., 61, basant Lok, Vasant Vihar, New Delhi. PAN:AAACP4526D	<u>Vs</u>	JCIT, Range-76, New Delhi.
APPELLANT		RESPONDENT

Assessee represented by:	Sh. Praveen Kumar, CA
Department represented by:	Sh. S.L. Verma, Sr. DR
Date of hearing	18.01.2023
Date of pronouncement	30.01.2023

ORDER

PER N.K.CHOUDHRY, JM:

The Assessee has preferred the instant appeal against the order dated 24.01.2019 impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-31, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2014-15.

2. The AO on the basis of information received from the Commissioner of income-tax, TDS-2, New Delhi observed to the effect that the Assessee has failed to deduct the tax at source as required under the provisions of Chapter-XVVB of the Act, for the following payments:

<i>Sl.</i>	<i>Particulars of Default</i>	<i>Base Amount (Rs.)</i>	<i>Interest Amount (Rs.)</i>	<i>Total Amount (Rs.)</i>
1	<i>Short deduction of TDS (F.Y. 2012-13)</i>	<i>9,40,800/-</i>	<i>-</i>	<i>9,40,800/-</i>
2	<i>Delay in deduction, not deposit (F.Y. 2013014)</i>	<i>1,93,162/-</i>	<i>28,026/-</i>	<i>2,21,188/-</i>
	<i>Total</i>	<i>11,33,962/-</i>	<i>28,026/-</i>	<i>11,61,988/-</i>

Therefore the AO show caused the Assessee vide letter dated 18.05.2015 and subsequently show cause notices dated 24.11.2015 and 25.2.2016 for imposition of penalty u/s 271C read with Section 274(1) of the Act. The Assessee in response to the said notices/show causes, filed its detailed reply dated 11.3.2016.

Though the AO considered reply and claim of the Assessee, however, not found acceptable and ultimately on an acceptance of the Assessee that during the year under consideration the Assessee has failed to deduct tax at source to the tune of Rs.

1,93,162/- and has pleaded to consider the omission with the scope of reasonable cause u/s 273B of the Act, levied the penalty to the tune of Rs. 1,93,162/- u/s 271C of the Act for the year under consideration.

3. The Assessee being aggrieved challenged the said penalty before the learned Commissioner, who vide impugned order affirmed the imposition of penalty u/s 271C of the Act by concluding as under:

*"4.1. All the grounds of appeal raised are pertaining to imposition of penalty u/s 271C at Rs. 1,93,162/- on account of non deduction of TDS. As regards the time limit of initiation of penalty proceedings u/s 271C, I find that there is no provision under the Act. However, the penalty proceedings have to be decided within the prescribed limit after initiation of the same which has been complied with by the AO and hence arguments of the Ld. AR on this account are rejected. Further, there is no requirement of treating the assessee as "assessee in default" u/s 201(1)/201(1A) before initiation of penalty proceedings u/s 271C since the proceedings of section 271C are totally independent. This view gets support from the decision of Hon'ble High Court in the case of IKEA Trading **Hong Kong Ltd (Supra)**. Thus, the arguments of the Ld. AR on this account are also rejected.*

*4.2. In respect of merits of the imposition of penalty u/s **271C**, undisputedly the appellant has made the payment for professional/architectural services to M/s Haskol and M/s Mile Stone Estate without deducting tax at source within the*

time prescribed. It is only after the tax auditor of the appellant company pointed out the error, the appellant deducted the tax in subsequent F.Y. Thus, from the facts of the case, it emerges that the appellant without a reasonable cause failed to deduct the tax at source on professional/architectural charges. Thus, the decisions relied upon by the Ld. AR become distinguishable on the facts. Accordingly, I hold that AO has rightly imposed penalty of Rs. 1,93,162/- in F.Y. 2013-14 (A.Y. 2014-15). Thus all the grounds of appeal raised are dismissed.

4. The Assessee being aggrieved is in appeal before us.
5. At the outset the learned AR of the Assessee submitted that though the Assessee defaulted in deducting the tax at source in the instant case within the period as prescribed under the Act, however, it is a fact that the Assessee subsequently deposited the TDS along with interest as soon as it came to its notice, on being informed by the tax auditor and, therefore, there was no mala fide intention not to deduct the TDS. Even it is a fact that though the Assessee carried out the transaction of Rs. 381.95 crores in the relevant assessment year on which TDS amounting to Rs. 20.35 crores was deducted and deposited, however, inadvertently committed error to the tune of Rs. 1,93,162/- only which is minimal in nature. The Assessee in support of its claim also relied upon the order dated 10.7.2015 passed by the Hon'ble coordinate Bench of the Tribunal in Assessee's own cases i.e. ITA no. 733 to

736/LKW/2013 for A.Y. 2007-08 to 2010-11, wherein also the identical situation has arisen.

6. On the contrary, the learned DR refuted the claim of the Assessee and vehemently supported the order passed by the AO and the learned Commissioner.

7. We have given thoughtful consideration to the peculiar facts and circumstance of the case. The Hon'ble Bench of the Tribunal in Assessee's own case for A.Y. 2007-08 to 2010-11 (supra), in paras 4 & 5 was pleased to observe as under:

"4. Having carefully examined the orders of the lower authorities in the light of the rival submissions, we find that undisputedly no order was passed under section 201(1) of the Act holding the assessee to be in default. The Assessing Officer has passed an order under section 201(1A) of the Act charging interest on the delayed payment of tax. We have also carefully perused the relevant provisions of section 271C of the Act and we find that the penalty under section 271C of the Act can only be levied where the assessee fails to deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B or pay the whole or any part of the tax as required by or under (i) sub-section (2) of section 115-O, or (ii) the second proviso to section 194B.

5. Our attention was also invited to the judgments of the Hon'ble Apex Court in the case of Coca Cola Beverage P. Ltd. vs. CIT, 293 ITR 226 (SC) and the Hon'ble jurisdictional High Court in the case of Jagran Prakashan Ltd. v. Deputy Commissioner of Income-tax (TDS) 345 ITR 228 (Alld) and

also various orders of the Tribunal, in which it has been held that wherein TDS was paid by the assessee or required tax was paid by the deductee, the assessee should not be held to be in default. Only interest on delayed payment under section 201(1A) of the Act can be charged. In the light of these decisions where the assessee has made payment of TDS though late, he cannot be held to be in default and there is no question of levy of penalty under section 271C of the Act. We have carefully perused the order of the Id. CIT(A) and we find that the Id. CIT(A) has adjudicated the issue in the light of various judicial pronouncements. Sine no infirmity has been pointed out in the order of the Id. CIT(A), we confirm the same. Accordingly, the appeals of the Revenue are dismissed."

8. Considering the peculiar facts and circumstances, as the Hon'ble Coordinate Bench in the Assessee's own case dealt with the identical situation and granted the relief to the Assessee by confirming the deletion of similar penalty by the then learned CIT(A), we are inclined to delete the penalty under consideration.

8.1 We observe from the facts and the order of the Coordinate Bench, that the Assessee is repeatedly making the defaults in deducting the TDS, therefore, we are inclined to direct that in subsequent default (s), the Assessee shall not be entitled to get the benefit of this order as a precedent and shall intimate/place this order before the authorities below, in case the same situation will crop up in future. Order accordingly.

9. In the result, in the aforesaid terms, the appeal of the Assessee is allowed.

Order pronounced in open court on 30.01.2023.

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

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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