

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 9282/Del/2019  
[Assessment Year: 2015-16]**

DCIT, Circle-76(1),  
new Delhi-110019

Vs M/s Omaxe Limited,  
7, Local Shopping Centre,  
Near Post Office, Kalkaji,  
New Delhi-110019.  
**PAN/TAN:AAACO0171H/DE  
L001861G**

**APPELLANT**

**RESPONDENT**

<b>Assessee represented by:</b>	Sh. Yuvraj Singh, Adv.
<b>Department represented by:</b>	Sh. Jitender Chand, Sr. DR
<b>Date of hearing</b>	05.01.2023
<b>Date of pronouncement</b>	30 .01.2023

**ORDER**

**PER N.K.CHOUDHRY, JM:**

The Revenue/Department has preferred the instant appeal against the order dated 09.09.2019, impugned herein passed by the Ld. Commissioner of Income tax (Appeals)-30, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2015-16.

**2.** In the instant case the Assessee being a public limited company, engaged in the real estate and construction business, entered into various agreements with the Government of Haryana through its Director Town and Country Planning Haryana (in short "DTCP") for obtaining license for setting up a residential colony in Haryana in accordance with Haryana Development and Regulation Urban Area Rules, 1976.

**2.1** As per the agreement entered into in Form LC-IV with DTCP, the Assessee was supposed/liable to pay proportionate External Development Charges (in short "EDC") as per rate, schedule, terms and conditions as set out in the agreement. During the year under consideration the Assessee paid EDC to the tune of Rs. 31,58,00,000/- to the Haryana Development Authority (in short "HUDA").

**2.2** Subsequently, a survey/ inspection was carried out in the office of HUDA and a detailed report of the survey was forwarded to the Assessing Officer (TDS). A notice u/s 271C of the Act was issued to the Assessee by the Additional Commissioner of Income-tax Range-76, New Delhi (in short "Addl. CIT"), for imposition of penalty for non-deduction of tax on payments made on account of EDC charges.

**2.3** In response to the said notice, the Assessee claimed that payment qua EDC is made to the Government and therefore the same is not liable to TDS.

**2.4** Such claim of the Assessee was found not acceptable by the Addl. CIT on the following reasons:

*“That payments made are in the name of Chief Administrator, HUDA. HUDA, primarily, is a new urban area development instrumentality. It undertakes large green field urban area development projects. It develops urban infrastructure. It also maintains such developed urban infrastructure. The books of accounts and relevant documents were examined during the survey. HUDA has received the amount of Rs. 2365,79,24,887/- as EDC charges in the financial year under consideration. Further, HUDA is a taxable entity, carrying out business activities to acquire, develop and dispose off land for residential, industrial, commercial and institutional purposes. For urban estates so developed in the state of Haryana, business is taxed by Income-tax Department which includes EDC.*

*Secondly, in the Circular No. 681 dated 8.3.1994 issued by the CBDT, it has been stated that a work done by one person is service rendered to another. The Circular at para (v) states that the ‘service contract would be covered by the provisions of this section, since service means doing any work. It further states at para (i) that ‘the provisions of section 194C shall apply to all types of contracts for carrying out any work including transport contracts, service contracts, advertisement contracts, broadcasting contracts, telecasting contracts, labour contracts, material contracts and work*

*contracts...'. The payments received as EDC are for EDWs like water supply, sewerage, drains, necessary provisions of treatment and disposal of sewage and storm water, roads, electrical works, solid waste management and disposal, slaughter houses, colleges, hospitals, stadium/sports complex, fire stations, grid sub-stations etc, and any other work which the Director may specify to be executed in the periphery of/or outside colony/area for the benefit of the colony/area.*

*EDC is worked out for a particular urban estate on the basis of the cost of external development services such as Master Water Supply, Master Sewage, Master Roads, Master Storm Water Drainage, Master Horticulture, Master Community building and other services is determined on the basis of a price index of a particular year in respect of a particular urban estate. The cost is determined by the Engineering Wing of HUDA keeping in view the requirement of development plan of an urban estate. EDC is charged from the sectors floated by HUDA or the license granted by the Town & Country Planning Department to the developers. EDC is charged from colonizers for using the developed urban infrastructure in urban estates wherein they are allowed to establish their commercial set ups. The EDC is arising out of an agreement which is in the nature of service contract wherein colonizers pay EDC to HUDA is rendering a service to colonizers for which EDC is paid. EDC is charged for development work received by HUEA from private builders and the work carried out is civil work in nature for providing amenities. EDC enhance the value of property and the value additions fetch higher price from prospective customers. Thus, EDC payments made by the builders to HUDA*

*are covered under service contract. **Therefore, a private builder is liable to deduct tax at source on such payments under the provisions of Section 194C of the Act. Hence, EDC ought be subjected to TDS by payers @ 2% u/s 194C of the Act.***

**2.5** The Addl. CIT also referred various orders/Circulars etc., issued by HUDA in respect of EDC for various years and ultimately held that the deductor/Assessee has failed to deduct/deposit part of tax at source, as required under various applicable provisions of Chapter XVII-B of the Income-tax Act, 1961. The Assessee/deductor in view of the above discussion is liable for penalty u/s 271C of the Act.

Consequently the Addl. CIT imposed the penalty to the tune of Rs. 63,16,000/- @ 2% of the EDC amount paid to HUDA on which the TDS was to be deducted u/s 194C of the Act.

**3.** The Assessee being aggrieved challenged the imposition of penalty, before the learned Commissioner, by raising the following grounds of appeal:

*“1. That on the facts and in the circumstances of the case, the order passed under section 271C of the Income Tax Act, 1961 (the Act) by the Additional Commissioner of Income Tax, Range 76, New Delhi (Addl CIT) is bad in law and therefore the appellant denies its liability to penalty of Rs. 63,16,000.*

*2. That the Addl CIT erred on facts and in law in holding that tax was deductible under section 194C on payments made on*

*account of External Development Charges (EDC) in pursuance to agreement entered into with Governor of Haryana acting through Director Town and Country Planning, Haryana (DTCP)*

3. *That the Ld. Assessing Officer erred on facts and in law in holding that the appellant had no reasonable cause under section 273B of the Act for non deduction of tax on payments made on account of EDC*

4. *The appellant craves leave to add, alter, amend or vary from the above grounds of appeal at or before the time of hearing.”*

**3.1** The Assessee before the learned Commissioner also filed various documents in support of its claim, on which the learned Commissioner sought the remand report from the learned Addl. CIT. On the basis of the documents/additional evidence filed by the Assessee and the Remand Report by the learned Addl. CIT, the learned Commissioner framed the following issues for adjudication:

*(a) Whether the Addl./Joint CIT can pass the order u/s 271C of the Act, without passing an order u/s 201(1)/201(1A) of the Act.*

*(b) Whether the penalty u/s 271C of the Act, cannot be levied when there is any confusion/debate on the issue.*

*(c) Whether there was reasonable cause/bonafide reason within the meaning of section 273B of the Income Tax Act, 1961.*

*(d) Whether penalty can be levied when the conduct of the appellant is not contumacious.*

(e) *Since on exactly the same issue, the Hon'ble ITAT has decided in favour of the appellant, there is binding precedent and should be followed.*

(f) *Whether the action of the Range head is barred by limitation as the penalty order should have been passed till 30.09.2017.*

**3.2** The learned Commissioner in answering the questions, *whether the penalty u/s 271C of the Act is a debatable issue; whether there was reasonable cause/bona fide reason within the meaning of Section 273B of the Act for not deducting the TDS; and whether the penalty can be levied when the conduct of the appellant is not contumacious, held as under:*

*“ That till date the appellant before this episode (F.Y. 2013-14) was not required to deduct tax u/s 194C of the Act with regard to payment of External Development Charges to HUDA. Even the Hon'ble CBDT issued a clarification on this issue vide its memorandum F.No. 370133/37/2017-TPL, dated 23<sup>rd</sup> December, 2017. This indicates that the issue at hand required clarification. “*

**3.3** The learned Commissioner also perused the judgment of the Hon'ble Punjab and Haryana High Court in the case of DLF Utilities Ltd. vs. DCIT (TDS) in CWP No. 1866/2018 (O&M) dated 29.01.2018, wherein it was held:

*“ That prima facie the agreements are with the Governor of Haryana. This shows that the prima facie view was that payments were made to Government. Even the receiving authority i.e. HUDA*

*has been advised by the Directorate of Town and Country Planning, Haryana, vide its letter dated 19.06.2018 that no TDS is to be deducted with regard to payment for EDC.”*

**3.4** The learned Commissioner also relied upon the order passed by the Hon’ble Delhi High Court in the case of Hindustan Coca Cola Beverages (P) Ltd. Vs. JCIT 387 ITR 471 (Del.) dated 01.08.2016, wherein the Hon’ble High Court accepted the plea of the Assessee and set aside the imposition of the penalty u/s 271C of the Act by holding, since the issue whether the TDS was to be deducted from warehouse charges u/s 194C or 194-I of the Act, was a debatable one, there was a reasonable cause for the failure of the appellant to deduct TDS u/s 194-I of the Act at the time such deduction had to be made.

**3.5** The learned Commissioner further relied upon the order passed by the coordinate bench of the Tribunal in the case of M/s RPS Infrastructure Ltd. vs. ACIT [ITA nos. 5805, 5806, 5349/Del/2019 dated 23.07.2019], wherein also the payments have been made as EDC charges to the HUDA and the Hon’ble coordinate Bench was pleased to hold as under;

*“ That from the facts it is evident that 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 bona fide 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 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 bona fide belief then no penalty shall be leviable u/s 271C of the Act as there was no contumacious conduct by the Assessee.

**3.6** The Ld. Commissioner also observed as under:

*“The Assessee in response to issue no. F, which relates to the point of limitation as the Assessee has raised the issue that genesis of the penalty proceedings is a letter dated 21.3.2017 issued by DCIT (TDS) Panchkula, which is covered within the meaning of definition of Assessing officer a per provisions of Section 2(7A) of the Act. Since this letter dated 21.03.2017 is the genesis of penalty order dated 22.01.2018, then the penalty*

*proceedings should have been completed uptill 30.09.2017. However, the penalty has been levied on 22.01.2018. This being the situation, the penalty is liable to be treated as time barred.*

The while coming to the aforesaid conclusion followed the dictum of the Hon'ble Apex Court in the case of K.M. Sharma vs. ITO 254 ITR 772 dated 11.04.2002, wherein it was held that:

*“Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events.”*

**3.7** The learned Commissioner ultimately deleted the penalty by holding that in view of the aforesaid precedents also, the penalty u/s 271C of the Act cannot be levied.

**4.** The Revenue department being aggrieved against the deletion of penalty, preferred the instant appeal by raising following grounds of appeal:

*“1. That on the facts and in the circumstances of the case and in law, the Ld.CIT (A) in its order dated 09.09.2019 for FY 2014-15 has erred in deleting penalty under section 271C of the Income Tax Act, 1961 as Ld. CIT(A) has not considered the clarification by*

*CBDT vide OM in F.No.370133/37/2017-TPL dated 23.12.2017 in respect of EDC paid to HUDA which is the development authority of State Government of Haryana and is a taxable entity under the Income Tax Act, 1961.*

2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred to hold that the penalty order got time barred as the initiation of penalty counts when the first notice was issued. In the instant case the notice was issued on 24.07.2017 and the limitation to impose penalty is 6 months from the end of the month in which notice issued.*

3. *That on the facts and in the circumstances of the case as serial no. 2, the Ld. CIT(A) has erred in law and facts by not considering the decision of Hon'ble High Court of Kerala in the case of M/s Grihalaxmi Vision vs. Addl.CIT, Range-1, Kozhikode vide ITA No. 83 of 2014, where the Hon'ble High Court of Kerala held that the initiation of penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply.*

4. *That the order of CIT(A) is being bad in law and erroneous in nature.*

5. *That the appellant craves leave to add or amend any one or more of the ground of appeal as stated above as and when need for doing so may arise."*

**5.** We have heard the parties and perused the material available on record. We observe that the learned Commissioner not only

thoroughly examined the factual aspects of the case but also relied upon judgments of the Hon'ble Supreme Court, Hon'ble High Court and the Hon'ble Tribunal. It is a fact that Hon'ble Tribunal in the case of M/s RPS Infrastructure Ltd. vs. ACIT {ITAs no. 5805, 5806 & 5349/DEL/2019 decided on 23-07-2019} also dealt with the identical issue as involved in this case.

**5.1** Further, the Hon'ble coordinate Bench in the case of Shree Vardhman Developers Pvt. Ltd. Vs. JCIT, Range-77, New Delhi [ITA no. 1957/Del/2020 dated 7.11.2022 (2022) (11) TMI 1053 – ITAT Delhi] while deciding the identical issue, has also taken into consideration the judgments passed by the coordinate benches in the case of Tulip Infratech Pvt. Ltd. vs. ACIT [ITA nos. 6734, 6735 & 6736/Del/2019]; and in the case of M/s RPS Infrastructure Ltd. vs. ACIT (supra), which also dealt with the identical issue as involved in the instant case. For ready reference, we are reproducing the concluding part of the order passed by the coordinate Bench in Shree Vardhman Developers Pvt. Ltd. Vs. JCIT (supra):

*“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 Coordinate 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/Dei/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.PS 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(1 A). 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. *In the light of aforesaid, ground no. 4 to 8 are decided in favour of the assessee and the appeal of assessee is allowed. Impugned penalty order is set aside.*

**5.1** Considering the peculiar facts and circumstances, since the coordinate Benches of the Tribunal in the cases referred to above have specifically dealt with the identical issue in hand and held clearly that on payment of “EDC” to the HUDA, no TDS is liable to be deducted, hence we are inclined not to interfere with the decision of the learned Commissioner, in deleting the penalty on this count.

**5.2** As we have decided not to interfere in the deletion of penalty on merits, hence, not dwelling into the point of limitation as raised by the Revenue/Department and other grounds of appeal as the same would prove futile exercise.

**6.** In the result, appeal filed by the Revenue/Department stands dismissed.

Order pronounced in open court on 30.01.2023.

**Sd/-  
(SHAMIM YAHYA)  
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