

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "F" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
A N D
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A Nos. 6817, 6818 & 6819/Del/2019
निर्धारणवर्ष /Assessment Years : 2014-15, 2015-16 & 2016-17

M/s. Precision Realtors P. Ltd. 305, 3 rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi - 110 015.	<u>बनाम</u> Vs.	ACIT, Range - 76, New Delhi.
PAN No. AAACP1042J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	Shri Ruchesh Sinha, Advocate;
राजस्वकीओरसे / Department by :	Shri S. M. Singh, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	17/11/2022
उद्घोषणाकीतारीख/Pronouncement on :	03/02/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. These three appeals are filed by the assessee against the common order of the Id. Commissioner of Income Tax (Appeals)-31

[hereinafter referred to CIT (Appeals)] New Delhi, dated 21.06.2019 for assessment years 2014-15, 2015-16 and 2016-17 in sustaining the penalty levied under section 271C of the Income Tax Act, 1961 (the Act) for non-deduction of TDS on the External Development Charges paid to Haryana Urban Development Authority [HUDA].

2. The ld. Counsel for the assessee, at the outset, submits that the issue as to whether penalty is leviable under section 271C of the Act has been decided by the co-ordinate bench of the Tribunal in ITA. Nos. 6301 and 6302/Del/2019 dated 7.06.2022 wherein the Tribunal deleted the penalty as there is no default under section 194C of the Act for the reason that provisions of section 194C are not applicable on payments to an agency like HUDA.

3. The ld. DR placed reliance on the orders of the authorities below.

4. Heard rival submissions perused the orders of the lower authorities. We observe that the issue in appeal i.e. as to whether penalty under section 271C of the Act is leviable for non-deduction of TDS under section 194C on the payments made towards External Development Charges to HUDA came up before the co-ordinate bench of the Tribunal in the case of Satya Developers Pvt. Ltd. Vs. JCIT and the co-ordinate bench by order dated 7.06.2022 deleted the penalty observing as under:-

“2. As per its grounds of appeal, the assessee has challenged the imposition of penalty under Section 271C of the Income Tax Act for non deduction of tax at source as per provisions of Chapter XVII-B towards amount paid as External Development Charges (EDC) to Directorate of Town and Country Planning, Haryana (Haryana Government) (DGTCP) through banking channel favouring Haryana Urban Development Authority (HUDA). The issue is no longer *res integra*. The identical issue has come up for adjudication before the Co-ordinate Bench of Tribunal in the case of *Spaze Tower Pvt. Ltd. vs. JCIT, New Delhi in ITA No.5842/Del/2019, order dated 26.05.2022*. The relevant operative paragraphs of the order of the Co-ordinate Bench squarely covers the issue which reads as under:

“6. We have carefully considered the rival submissions. The Assessing Officer / JCIT levied penalty of Rs.6,14,460/- under Section 271C for short deduction / non-deduction of tax at source alleging default committed by the assessee under Section 194C on payment of External Development Charges (EDC) to Haryana Urban Development Authority (HUDA). With the assistance of the ld. counsel, we find that the Directorate of Town and Country Planning, Haryana (Haryana Government) has issued clarification on TDS deduction on EDC payments vide letter dated 19.06.2018 which is self explanatory and thus reproduced herein for ready reference:

*“To
The Chief Administrator,
Haryana Shahari Vikas Pradhikaran,
Panchkula,*

*Memo No.DTCP/ACCTTS/Assessing Officer
(HQ) /CAO/2894/2018 Date : 19.6.2018*

*Subject : Clarification on TDS Deductions on
EDC Payments.*

Please refer to the matter cited as subject above.

1. Section 2(g) of the Haryana Development and Regulation of Urban Areas Act, 1975 defines that external development works (hereinafter referred as EDW) shall include any local infrastructure development works like water supply, sewerage, drains, provisions of treatment and disposal of sewage, sullage 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/or 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.

2- As per Section 3(3)(ii), license holder has to pay proportionate development charges if the external development works as defined in clause (g) of section 2 are to be carried out by the Government or any other local authority. The proportion in which and the time within which, such payment is to be made, shall be determined by the Director.

3. Presently, external development works in the periphery of or outside colony/area for the benefit of the colony/area are being executed by Haryana Shahari Vikas Pradhikaran thereafter HSVP) which is the Development Authority or state Govt. Earlier upto 31.03.2017, Department of Town & Country Planning used to collect the external development charges from the colonizer to whom licences have been granted under Act No. 8 of 1975 and the persons to whom permission for change of land use have been granted under Act No. 41 of 1963, in the shape of bank draft drawn in favour of CA, HSVP and send the same to CA, HSVP.

4. As the receipt on account of EDC was not sufficient to carry out the all development works under EDC for the urban estate as per approved development plans, therefore to meet out the short fall, a new scheme Swaran Jayanti Haryana Urban Infrastructure Development Scheme (renamed as Mangal Nagar Vikas Yojana) was approved by the State Govt. and appropriate budget provision for execution of development works has been made in the said scheme. From Financial Year 2017-18, the receipts on account of EDC is being deposited in the consolidated fund of the State under Major Receipt Head-0217 receipts and all license/CLU holders have also been directed vide order dated 12.05,2017 that payment of EDC in respect of license/CLU granted by TCP Deptt. may be made online through e-payment gateway or in shape of demand drafts favouring Director, Town & Country Planning, Haryana. Required funds for execution of development works are released to HSVP after granting the sanction from the Finance Department.

It is, therefore, clarified that HSVP is only an executing agency for and on behalf of State Govt. for carrying out EDW for which funds are given to HSVP by the Govt. through TCP Deptt. Since, payment for EDC has been made to TCP Deptt. of State Govt., no TDS was/ is to be deducted out of payment made to Govt. for EDW.

Accounts officer (HO)
For: Director Town & Country Planning
Haryana, Chandigarh.

7. On the basis of the aforesaid clarification, the assessee contends that the payment to HUDA is, in effect, payment to State Government and therefore such payment is exempt from obligations to deduct TDS in view of Section 196 of the Act.

8. We also notice that identical issue has been examined by the Coordinate Bench in the case of *Perfect Constech Pvt. Ltd. vs. Additional Commissioner of Income Tax* in ITA No.6907/Del/2019 order dated 29.12.2020 wherein Co-ordinate Bench found that the provisions of Section 194C are not applicable on payments to agencies like HUDA on behalf of the State Government. The imposition of penalty under Section 271C was consequently found to be unsustainable in the absence of default of Section 194C of the Act.

9. The facts and issue being identical, in the light of the clarification noted above coupled with view taken by the Coordinate Bench in the identical facts situation, we see no reason to depart therefrom. Consequently, we find merit in the plea raised on behalf of the assessee for cancellation of penalty imposed under Section 271C of the Act.”

3. In consonance with view taken by the Co-ordinate Bench, we hold that imposition of penalty of Rs.4,56,440/- and Rs.5,34,000/- under Section 271C of the Act for the Assessment Years 2014-15 and 2017-18 respectively, is not justified in view of the finding of the Co-ordinate Bench that the assessee has not committed any violation of provision of Chapter XVII B of the Act by making payment towards EDC charges to DGTCP Haryana through HUDA without deduction of TDS.”

5. Respectfully following the said decision, we direct the Assessing Officer to delete the penalty levied under section 271C of the Act on the payments made to the authorities of HUDA.

6. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on : 03/02/2023.

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

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

Dated : 03/02/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	30.01.2023
Date on which the typed draft is placed before the dictating Member	31.01.2023
Date on which the typed draft is placed before the Other Member	03.02.2023

Date on which the approved draft comes to the Sr. PS/PS	03.02.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	03.02.2023
Date on which the fair order comes back to the Sr. PS/PS	03.02.2023
Date on which the final order is uploaded on the website of ITAT	03.02.2023
Date on which the file goes to the Bench Clerk	03.02.2023
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	