

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

आ.अ.सं./I.T.A No.7436/Del/2019

निर्धारणवर्ष/Assessment Year: 2014-15

Viresh Promoters & Developers P. Ltd. LGF-10, Vasant Square Mall, Plot-A, Sector-B, Pocket-V, Community Centre, Vasant Kunj, New Delhi.	Vs.	Addl. CIT Range-78, New Delhi.
PAN No. AACCV2736K		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	S/Shri Ved Jain, Adv. Aman Garg, CA Ms. Supriya Mehta, CA
राजस्वकीओरसे /Revenue by	Shri M. Baranwal, CIT DR & Shri Sanjay Kumar, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	03.02.2023
उद्घोषणाकीतारीख/Pronouncement on	11.04.2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-31, New Delhi dated 26.06.2019 for the AY 2014-15 in sustaining the penalty levied u/s 271C of the Income Tax Act, 1961 of Rs.11,44,000/-.

2. The Ld. Counsel submits that assessee is a company engaged in the business of Real Estate and for the purpose of developing commercial

colony in Haryana assessee was required to obtain a license from Director Town and Country Planning (DTCP) Government of Haryana. It is submitted that one of the conditions were granting such license by DTCP is payment of External Developed Charges (EDC). Ld. Counsel submits that during the assessment year 2014-15 assessee paid Rs.5.72 crores as EDC to Haryana Urban Development Authority (HUDA) as per the direction of DTCP for granting license. The Ld. Counsel submits that consequent to the survey u/s 133A of the Act in the premises of HUDA, Punchkula on 09.02.2017 and 14.02.2017, a notice u/s 271C of the Act dated 01.08.2017 was issued to the assessee for non deduction of TDS on the payments made by the assessee to HUDA and a penalty order was passed u/s 271C of the Act on 11.01.2018 for non deduction of TDS on the payments made to HUDA. Ld. Counsel submits that, before the Ld.CIT(A) assessee contended that penalty notice u/s 271C of the Act issued does not specify the section under which the assessee should have deducted tax at source and hence, proceedings arising from the show-cause notice as well as order of imposing penalty is liable to be quashed. Ld. Counsel also submitted that assessee contended that EDC are determined and levied by DTCP which is the Department of Government of Haryana and, therefore, payment of EDC should be considered as payment to the State Government and accordingly, provisions of section 196 should not apply on payment of EDC. Assessee also contended that in the absence of any contract between HUDA and assessee the provision

of section 194C of the Act shall not apply. It was contended that there is no contractor/contractee relationship between HUDA and assessee and existence of contractor/contractee relationship is necessary pre-requisite for the purpose of applicability of provision of section 194C of the Act. However, the Ld.CIT(Appeals) sustained the order of the Assessing Officer in levying penalty u/s 271C of the Act. Ld. Counsel submits that the identical issue has been decided by the Tribunal in the case of Vipul Ltd. vs. ACIT in ITA No. 1856/Del/2020 dated 29.07.2022, wherein the Tribunal deleted the penalty levied u/s 271C of the Act under identical circumstances.

3. The Ld. DR supported the orders of the authorities below.

4. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. We observed that identical issue of whether penalty u/s 271C of the Act can be levied for non deduction of TDS on the payments made to HUDA by the assessee came up before this Tribunal in the case of Vipul Ltd. vs. ACIT in ITA No. 1856/Del/2020 dated 29.07.2022 and also in the case of Sirur Developers Pvt. Ltd. vs. JCIT(TDS) in ITA No. 1164/2021 dated 08.09.2022 and the Tribunal deleted the penalty levied u/s 271C of the Act observing as under: -

“3. On hearing the rival contentions and perusing the orders of the authorities below, we find 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 the case of TDI Infrastructure Ltd. Vs. Addl. CIT for the assessment year 2014-15 in ITA. No. 6653/Del/2019 and the Tribunal by order dated 06.07.2022 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. 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, Sector18, 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 I.T.A. No. 1164/Del/2021 4 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 Coordinate 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 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 license 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 bona fide 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."

4. Facts being identical, respectfully following the decision of the Tribunal in the case of TDI Infrastructure Ltd. Vs. Addl. CIT (supra) we delete the penalty levied under section 271C of the Act. Grounds raised by the assessee are allowed."

5. Facts being identical. Respectfully following the said decision, we delete the penalty levied u/s 271C of the Act. Grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11/04/2023

**Sd/-
(G.S. PANNU)
PRESIDENT**

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

Dated: 11/04/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi