

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. C. M. Garg, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 4902/Del/2018 : Asstt. Year: 2013-14

Oxygen Services India Pvt. Ltd., G-4, Community Centre, C-Block, Narina Vihar, New Delhi-110028	Vs.	JCIT, Range-76, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCI1405K // TAN -DEL103935B		

**Assessee by : Sh. Praveen Kumar, CA
Revenue by : Ms. Smita Singh, Sr. DR**

Date of Hearing: 19.07.2023	Date of Pronouncement: 31.07.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-XXV, New Delhi dated 08.05.2018.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals) ["Ld. CIT (A)"] has erred both on facts and in law in upholding the penalty order under section 271C of the Income-tax Act, 1961 ("the Act") levying the penalty of Rs. 4,43,734, being barred by limitation under section 275 of the Act, which is arbitrary, unjustified and bad in law. Hence, the penalty order passed under section 271C of the Act be quashed.

2. On the facts and circumstances of the case, the Ld. CIT (A) has erred both on facts and in law in confirming the levy of penalty of Rs. 4,43,734 under section 271C of the Act for non-compliance of the provisions of tax deduction at source which is arbitrary, unjustified and bad in law.

The observations of the Ld. JCIT in levying penalty are based on erroneous views and/or non appreciation of the facts and law involved and without properly considering the material on record. The levy of penalty is unwarranted and not capable of being sustained."

3. Facts relevant to the adjudication of the appeal are that penalty of Rs.4,43,734/- u/s 271C of the Income Tax Act, 1961 has been levied by the Joint Commissioner of Income tax. The question arose who is the competent authority to levy of penalty as per the provisions of Section 271C. The said provisions read as under:

"Penalty for failure to deduct tax at source.

271C. (1) If any person fails to—

(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

(b) pay 48[or ensure payment of,] the whole or any part of the tax as required by or under—

*(i) sub-section (2) of section 115-O; [***]*

*(ii) the 50[***] proviso to section 194B;*

*[(iii) the first proviso to sub-section (1) of section 194R; or**

*(iv) the proviso to sub-section (1) of section 194S; or**

[(v) sub-section (2) of section 194BA+,]

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay 51[or ensure payment of,] as aforesaid.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

4. From the reading of the provisions of the Act reproduced above, it is clear that the penalty u/s 271C is to be imposed by the Joint Commissioner of Income Tax.

5. In this case, the show-cause notice u/s 274 has been issued by the Joint Commissioner of Income Tax, the Competent Authority to levy penalty on 26.11.2015 and the order has been passed 19.04.2016.

6. The provisions of Section 275(1) reads as under:

"275. (1) No order imposing a penalty under this Chapter shall be passed—

(a) in a case where the relevant assessment or other order is the subject-matter of an appeal to the [Joint Commissioner (Appeals) or to the] Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later :

Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the [Joint Commissioner (Appeals) or to the] Commissioner (Appeals) under section 246 or section 246A, and [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall

be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of 60 [the Joint Commissioner (Appeals) or] the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later;

(b) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;

(c) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.”

7. In this case, the penalty u/s 271C has been initiated on 26.11.2015 and levied on 19.04.2016 which is well within the time allowed as per the provisions of Section 275(1). The period of counting of limitation should start only from the date, the Competent Authority initiated the proceedings. The Assessing Officer/Assistant Commissioner of Income Tax, Circle-76(1) of the TDS range is not the Competent Authority to levy the penalty. Any initiation or levy of penalty by any non-Competent Authority is non-est in the eyes of law.

8. In this case, the assessee failed to deduct tax at source on crediting of expenses of Rs.68,21,484/-. The assessee argued that during the year, the company has made provision of the expenses due to non-receipt of invoices. The Id. JCIT held that

under the mercantile system of accounting, accrual of liability for any expenditure is not dependent upon the receipt of invoices from the persons to whom payment for expenditure is credited. Once, the expenditure are covered under Chapter XVII-B of the Act are accounted and entered in the books of accounts, the liability of the assessee triggers for deduction of tax on such expenses. Similarly, the disallowance u/s 40(a)(ia) do not wean a way levy of penalty u/s 271C. We have also gone through the case laws relied upon by the assessee during the arguments and find that they are not applicable to the facts of the case. In the instant case, it is undisputed that the tax has not been deducted on the amounts paid for which the assessee is liable to deduct tax u/s 194 and the penalty has been rightly initiated by the Competent Authority u/s 271C and levied within the due time as prescribed u/s 275(1).

9. In the result, the appeal of the assessee is dismissed.
Order Pronounced in the Open Court on 31/07/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 31/07/2023

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR