

आयकर अपीलीय अधिकरण
मुंबई पीठ "एच", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY S, ACCOUNTANT MEMBER
आअसं. 1729/मुं/2022 (नि.व. 2017-18)
ITA NO.1729/MUM/2022 (A.Y.2017-18)
आअसं. 1730/मुं/2022 (नि.व. 2018-19)
ITA NO.1730/MUM/2022 (A.Y.2018-19)

Kundan Industries Ltd.
Kundan House, harisiddhi Estate,
Gorai Pada, Vasai (East),
Palghar, Maharashtra-401208.
PAN: **AAACK6811G**

..... अपीलार्थी / Appellant

बनाम Vs.

Jt.CIT , TDS Range,
Ground Floor, Qureshi Mansion,
Gokhale Road, Naupada,
Thane (West)-400602.

..... प्रतिवादी / Respondent

अपीलार्थी द्वारा/ Appellant by : Sh. Rahul Hakani, Advocate
प्रतिवादी द्वारा/ Respondent by : Sh. Prakash Kishinchandani, Sr. DR
सुनवाई की तिथि/ Date of hearing : 03/08/2023
घोषणा की तिथि/ Date of pronouncement : 09/08/2023

आदेश / ORDER

PER VIKAS AWASTHY, JM

These two appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-11, Pune (hereinafter referred to as 'the CIT(A)') for the Assessment Years (AY) 2017-18 & 2018-19, respectively. Both the impugned orders are of even date i.e. 20.05.2022. Since, the grounds raised in

both the appeals and the facts germane to the grounds of appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

ITA No. 1729/Mum/2022 for A.Y. 2017-18

2. The assessee in appeal has raised following grounds:

“1. On the facts and circumstances of the case, the learned CIT(A) erred both in law and on facts in upholding the order of penalty order u/s.271C of the Act dated 26.03.2018 passed by the Jt. CIT(TDS) levying penalty of Rs. 12,94,375/-.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the appellant had deposited TDS with interest in the government account so as to end dispute with Revenue and there was no contumacious conduct on the part of the assessee which is necessary for levy of penalty u/s. 271C of the Act.”

3. Sh. Rahul Hakani appearing on behalf of the assessee submitted that the assessee had taken loan from Dewan Housing Financial Corporation Ltd. (DHFL). The assessee repaid loan in monthly instalments along with interest. The assessee was under bonafide belief that DHFL being a Non Banking Finance Company (NBFC) approved by Reserve Bank of India (RBI), the assessee is not required to deduct tax at source on monthly payment of interest component in the instalment. Thus, the assessee did not deduct tax at source on the interest amount paid to DHFL. The bonafide belief of the assessee was further reinforced on receiving Tax Audit Report (TAR). The Tax Auditors in their report for the relevant period did not point any default in deducting tax at source, nor the report was qualified by the Tax Auditors for non-deduction of tax at source in respect of interest payment to DHFL. The Id. Counsel submitted that it was only during survey action at the premises of the assessee, it transpires that the assessee was required to deduct tax at source on the interest payment to DHFL.

The assessee has thereafter deposited amount of TDS that was required to be deducted along with interest to the Government Exchequer. The Id. Counsel contended that the AO has levied penalty under section 271C of the Act vide order dated 26.03.2018 for the default of non-deduction of tax at source on interest payment to DHFL without considering the fact that the assessee has already discharged tax liability of the deductor.

4. The Id. Counsel submitted that in the assessee had a bonafide reason for non-deduction of tax at source. In support of his submissions he placed reliance on the following decisions of Tribunal:

(i) Sukhdev Singh Vs. JCIT (TDS) in ITA No. 116/Chd/2014 for AY 2009-10 decided on 29.09.2014.

(ii) Siby Mining and Infrastructure Pvt. Ltd. vs. JCIT (TDS) in ITA Nos. 28 to 34/Hyd/2018 vide AYs 2009-10 to 2015-16 decided on 11.05.2018.

The Id. Counsel submits that in both the aforesaid cases, the payments were made to NBFCs without deduction of tax at source on interest component, the Tribunal deleted penalty levied under section 271C of the Act accepting bonafide belief of the assessee for non-deduction of TDS on payment made to NBFC's. He prayed for setting-aside the impugned order allowing appeal of the assessee.

5. Per contra, Sh. Prakash Kishinchandani representing the Department vehemently defended the impugned order. The Id. DR submitted that the assessee has taken a fresh plea before the Tribunal. No such plea of bonafide belief was raised before the CIT(A) or the AO. Therefore, the argument raised on behalf of the assessee cannot be accepted. He prayed for upholding the impugned order and dismissing appeal of the assessee.

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. It is an undisputed fact that the assessee has failed to deduct tax at source on interest payments made to DHFL. It was during survey action carried out at the premises of the assessee that the default in TDS on interest payment came to the fore. The AO initiated penalty proceedings under section 271C of the Act. In the meantime, the assessee deposited the entire amount that was required to be deducted as tax at source on interest payment to DHFL along with interest to the Government Exchequer. This fact has been recorded by the AO in order dated 26.03.2018 passed under section 271C of the Act. The AO levied penalty under section 271C of the Act on the ground that the assessee has not claimed the benefit of section 273B of the Act by establishing that there was a reasonable cause justifying the failure to comply with the provisions of section 194A of the Act.

7. The Id. Counsel of the assessee has made statement before the Bench that the assessee did not deduct tax at source on interest payment to DHFL under the bonafide belief that DHFL being NBFC approved by RBI, no tax was required to be deducted at source on interest payment. It has been further pointed that even the Tax Auditors have not qualified their report qua default in non-deduction of tax at source on interest payment to DHFL.

We are of considered view that the assessee has been able to show reasonable cause for non-deduction of tax at source on the payment of interest to DHFL.

8. The Co-ordinate Bench of Tribunal in case of Sukhdev Singh Vs. JCIT (supra), in similar set of fact accepted the plea of assessee that since payments were made to NBFC, the omission to comply with TDS provisions was under bonafide belief that TDS was not required to be deducted. In the said case as

well, the assessee after coming to know of the default, paid the taxes and started deducting tax at source on future payment. The Co-ordinate Bench accepted the explanation furnished by the assessee and deleted penalty levied under section 271C of the Act. For the sake of completeness relevant extract of the said order is reproduced herein below:

“3.....The circumstances explained by the learned counsel for the assessee clearly reveal that the assessee paid interest to non- banking financial institution and did not deduct tax because the assessee was under the bonafide belief that no TDS was to be deducted on the payments made to non-banking financial institution. The Assessing Officer made disallowance under [section 40\(a\)\(ia\)](#) of the Income Tax Act and other additions were also made in the assessment order, which are accepted by the assessee and the demand raised as per assessment order has been paid. Therefore, these circumstances would clearly reveal that the assessee has reasonable cause for failure to comply with the provisions of section. Therefore, in view it being a beginning of the assessee for failure to deduct tax and then the assessee in future has starting deducting TDS would suggest that the penalty may not be imposed in the aforesaid case. Considering the above discussion, we are of the view that the levy of penalty in the facts and circumstances of the case is not warranted. We accordingly set aside the orders of the authorities below and cancel the penalty.”

9. In the case of Siby Mining and Infrastructure Pvt. Ltd. vs. JCIT (supra), penalty under section 271C of the Act was levied for default in deducting tax at source on the payment of interest to NBFCs. Similar explanation was furnished by assessee therein for non-deduction of tax at source, the Tribunal deleted the penalty by holding as under:

“21. We have carefully considered the rival submissions and perused the record. Learned Counsel for the Assessee submits that non-deduction of tax at source was on account of multiple factors which are linked to one and another. It is not in dispute that the assessee had to pay post-dated cheques immediately at the time

of taking loans. It claims that it was under bonafide impression that the post-dated cheques having been encashed directly from the NBFCs which includes principal component as well as interest component, it could not have deducted tax at source. It was also supported by the advice of the Chartered Accountant, who was not only a Statutory Auditor but also a Tax Auditor of the assessee-company. The consistent plea of the assessee was that there was no such negligence on the part of the assessee right from the inception of the business except in the case of payments made to the NBFCs. The Tax Auditor had certified in his tax audit report that wherever the tax ought to have been deducted at source, the assessee complied with the Statutory obligation which implies that the Chartered Accountant was also under the bonafide belief that in the peculiar circumstances of the case, there was no need to deduct tax at source. This was also supported by an affidavit duly signed by the Chartered Accountant. It is not the case of the assessee that even after pointing it out to the assessee, about the failure to deduct tax at source, the assessee refused to accept the stand taken by the Assessing Officer. In fact, the assessee dutifully proved that the recipients have filed returns of income therefore assessee cannot be treated as a defaulter within the meaning of section 201(1) of the Act. The Learned Counsel for the Assessee also submitted that the assessee has not disputed the payment of interest u/s 201(1A) of the Act. Leviability of penalty has to be analysed in this backdrop. As rightly observed by ITAT Special Bench Hyderabad (supra) the expression "reasonable cause" has to be considered liberally to advance the cause of justice rather than considering the explanation of the assessee by adopting a harsh and legalistic approach. Even if it is assumed that the assessee has given varied explanation before the Ld. CIT(A) for the first time, it cannot be said to be different from the explanation originally tendered. No doubt the assessee was under impression that it could not have deducted tax at source since post-dated cheques were given to NBFCs. Added to the opinion, the Chartered Accountant has also not qualified in his audit report that the assessee ought to have deducted tax at source....."

The Tribunal accepted the plea of bonafide belief for non-deduction of TDS and deleted penalty levied under section 271C of the Act.

10. In the facts of the present case and considering the decisions rendered by the Co-ordinate Bench, we find merit in the case of assessee. The assessee has been able to show reasonable cause for non-deduction of tax at source on interest payment to NBFC (DHFL) during the relevant period. Hence, penalty levied under section 271C of the Act is directed to be deleted.

11. In the result, impugned order is set-aside and appeal of the assessee is allowed.

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12. Both sides are unanimous in stating that the facts in the impugned AY are identical to the facts in AY 2017-18, except for the amount of penalty. The detailed findings given while adjudicating appeal of assessee for AY 2017-18 would *mutatis mutandis* apply to the present appeal. For parity of reasons, penalty levied under section 271C of the Act in AY 2018-19 is directed to be deleted.

13. In the result, impugned order is set-aside and appeal of the assessee is allowed.

14. **To sum up, appeal of assessee for AY 2017-18 and 2018-19 are allowed.**

Order pronounced in the open court on **Wednesday**, the 09th day of August, 2023.

Sd/-

(MS. PADMAVATHY S)

Sd/-

(VIKAS AWASTHY)

लेखाकार सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई / Mumbai, दिनांक / Dated: 09/08/2023

SK, Sr. PS

प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. विभागीय प्रतिनिधि, आय.अपी.अधि. , मुंबई/DR, ITAT,
Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai