

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

**BEFORE SHRI CHALLA NAGENDRA PRASAD:
JUDICIAL MEMBER**

ITA No.2020/Del/2023
Assessment Year: 2015-16

Shyam Communication Systems, A-60, Naraina Industrial Area-1, New Delhi	Vs.	JCIT, Range-77, New Delhi
PAN :AAAFS0323A		
(Appellant)		(Respondent)

Department by	Shri Om Parkash, Sr. DR
Assessee by	Shri Rijesh Bajaj, Adv.

Date of hearing	29.11.2023
Date of pronouncement	21.02.2024

ORDER

This appeal is filed by the assessee against the order of the learned Commissioner of Income-Tax (Appeals)-29, New Delhi dated 23.05.2023 for the assessment year 2015-16 in sustaining the penalty levied under Section 271C of the Income-Tax Act,1961 for non-deduction of TDS.

2. The learned counsel for the assessee at the outset submits that the issue is squarely covered in favour of the assessee by various decisions of the Co-ordinate Benches of the Delhi Tribunal wherein on identical facts, the Tribunal deleted the penalty for non-deduction of TDS on payments made to HUDA on account of EDC charges.

3. Learned Departmental Representative supported the orders of the authorities below.

4. Heard rival contentions and perused the orders of the authorities and the decisions relied on. In the case of the assessee, penalty under Section 271C of the Act was levied for non-deduction of TDS under Section 194C of the Act on payment of EDC charges to HUDA on the ground that HUDA is not a government authority. The assessee contended that EDC payment made to HUDA is not liable for TDS. However, the Assessing Officer rejected the contention of the assessee levied penalty under Section 271C of the Act. On appeal, learned CIT (Appeals) confirmed the penalty.

5. Identical issue came up before several Benches of the Tribunal and the Tribunal in the case of Shiv Sai Infrastructure Pvt. Ltd. vs. ACIT in ITA No.5713/Del/2019 dated 11.09.2019 deleted the penalty

holding that there was a reasonable cause for non-deduction of tax at source by the company. While holding so, the Tribunal observed as under:

“4. Before us Ld. Counsel has made various submissions. Sums and substance of which can be summarized as under:- -

No TDS is required for the payment to the Govt. u/s.196 of the I.T. Act.

- It is a case where payments have been made to DTCP, Govt. of Haryana and the A.O. is wrong in assuming that EDC payment has been made to HUDA. - The assessee entered into agreement with Haryana Govt. through Haryana Governor through Director Town & Country Planning (DTCP) on 25.01.2008.

- Clause-I(a) of the said agreement provided for payment of EDC charges to HUDA through Director Town & Country Planning (DTCP), Govt. of Haryana.

- Accordingly, the assessee prepared the EDC payment drafts in the name of "Chief Administrator HUDA" and delivered the same to DTCP, Govt. of Haryana, through covering letter addressed to DTCP which is acknowledged by DTCP.

- Hence in substance, the payment has been made to DTCP, Govt. of Haryana and the draft has been issued in the name of HUDA 4 only on the directions and on instructions and on behalf of DTCP Govt. of Haryana.

- There is no privity of contract / agreement between assessee and HUDA that such payments are to be made to HUDA.

- DTCP, directed to make the payment to HUDA on DTCP behalf, for the reason that HUDA (now known as Haryana Shahkari Vikas Pradhikaran (HSVP) w.e.f.01.06.17) was its executing agency for carrying out external development.

- DTCP, vide its clarification Dtd.19.06.18 also clarified that the payment to HUDA / HSVP is on behalf of State Govt.

- DTCP, vide its clarification Dtd.19.06.18 also clarified that no TDS "was / is" to be made for the payments made to the Govt. for EDC / EDW (External Development Charges).

- The clarification Dtd.19.06.18 specifically provides for no TDS for EDC even if paid prior to date of clarification i.e. 19.06.18 by the use of words "was / is" in the said clarification.

- CIT(A) order mentions some CBDT clarification Dtd.23.12.17 in this regard, the coordinate bench order in RPS Infrastructure Ltd. also refers to this clarification Dtd.23.12.17 as CBDT circular.

- It is not a CBDT circular but only an office memorandum wherein CBDT has given its opinion to "National Real Estate Development Council" which sought its clarification from CBDT on this issue.

- At the outset, it is not a CBDT circular, it is also not a direction of CBDT u/s.119, it is only an opinion of CBDT, which cannot take the character of the interpretation of the law to be applied compulsorily.

- Also, in said letter CBDT says "it appears that ..." which also shows that the CBDT is not very clear that whether this payment is to be taken as paid to Govt. or to HUDA.

- It is apparent that the said CBDT letter provides opinion only on assumption that it is a payment not to the Govt., which is apparently wrong in view of the clarification of DTCP Dtd.19.06.18.

- Also, this opinion of the CBDT is Dtd.23 .12.17 while in the case of the assessee all payments were made prior to 23.12.17.

- Hence it is a payment to the Govt. and therefore not subjected to TDS.

Reasonable cause u/s 273B – no loss to revenue

- The assessee has been bonafidely believing the payment to the Govt. has covered u/s 196, therefore not subjected to TDS

- The bonafide belief of the assessee stands confirmed by the clarification of DTCP, Govt. of Haryana vides its clarification Dtd.19.06.18, which also provided that position of no TDS on EDC was even applicable before 19.06.18.

- The letter of CBDT Dtd. 23.12.17 is subsequent to the payments made

- In the case of RPS Infrastrucutre Ltd., under similar facts it has been held to be a case of reasonable cause.

5. We find that, precisely similar issue had come up for consideration to the coordinate bench of RPS Infrastructure Ltd. vs. ACIT, wherein Tribunal has observed and held as under :-

“11. We have heard the rival submissions, perused the relevant findings given in the orders passed by the authorities below and the 6 various judgments and

materials relied upon by both the sides. On going through the facts, we note that dispute is with regard to nondeduction of tax in respect of payment of EDC charges made by the assessee to HUDA. As per the 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(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 8 (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 271C."

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."

12. The above judgment has been followed by the Coordinate Bench of the ITAT DELHI in the case of DCIT TDS) , ACIT, TDS AND JCIT, TDS, Dehradun Versus The Joint Secretary Organizing Committee For Winter Games whereby the penalty levied under section 271C has been deleted by recording the following findings:

"31. We have carefully considered the rival contentions and perused the orders of the lower authorities. On looking to the facts of the case as discussed by us in appeal of the assessee and revenue in 201(1) and 201(1A) proceedings above, we find that the belief of the assessee is bonafide and failure to deduct tax at source u/s 194C of the Act is for a reasonable cause. The ld Assessing Officer could not show any contemptuous conduct on part of the assessee for non-deduction of tax at source. There 9 could also not be any reason for non-deduction as assessee has made most of the payments to the public sector undertaking. The Hon'ble Supreme Court in the case of CIT Vs. Bank of Nova Scotia in 380 ITR 550 has approved the decision of the Hon'ble Delhi High Court wherein, it has been held that it is necessary to establish 'contumacious conduct' on

the part of the assessee for failure to deduct tax at source for levy of penalty u/s 271C of the act. In the present case, all the recipients have also furnished a certificate that they have received the payment. In view of this, we reverse the order of the ld CIT (A) confirming the levy of the penalty of ₹ 1152461/- u/s 271C of the Act in absence of any finding to show contumacious conduct on the part of the assessee. Ld OA id directed to delete the penalty-levied u/s 271C of the act. Accordingly, appeal of the assessee in ITA No. 1576/Del/2015 for AY 2010-11 is allowed.”

Similarly in the case of Virgin Mobile India Pvt. Ltd versus JCIT (TDS), Range-51, Room No. 406, New Delhi No.- ITA No. 3431/ Del/2015 dt. November 28, 2018, the Coordinate Bench of ITAT has deleted the penalty levied under section 271C of the Act.

13. In view of the above facts and the analysis, we hold that there was a reasonable cause for non-deduction of tax at source by the assessee company. Further, in the absence of any findings that the assessee has deliberately avoided the TDS provision and as such there is no contumacious conduct on the part of the assessee. Accordingly, we reverse the findings of the lower authorities and direct the AO to delete the penalty for all the three years.

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

6. The aforesaid reasoning and conclusion by the Tribunal would apply here in this case also because similar facts and issues are 10 permeating in the present appeal also. Accordingly, we hold that no penalty u/s 271C is leviable and same is directed to be deleted.

7. In the result appeal of the assessee is allowed.”

6. Similar view has been taken by the Co-ordinate Bench of the Tribunal in the case of M/s. Sarv Estates Pvt. Ltd. vs. JCIT in ITA Nos.5337 & 5338/Del/2019 dated 13.09.2019. The aforesaid reasoning and conclusion of the Tribunal applies to the assessee's case on hand as the facts are identical. Respectfully following the above decisions, the Assessing Officer is directed to delete the penalty levied under Section 271C of the Act for the assessment year 2015-16.

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

Order pronounced in the open court on 21 /02/2024.

Sd/- (CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Dated: 21st February,2024.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi