

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &  
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA Nos. 860/Del/2023  
(Assessment Year : 2017-18)

<b>M/s. Nagar Palika Parishad,</b> Nagar Palika Parishad, Hapur, UP-245 101	Vs.	<b>ITO</b> Ward – 2(2)(3) Ghaziabad
<b>PAN No. AAALN 1136 A</b>		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

ITA Nos.861 & 862/Del/2023  
(Assessment Year : 2018-19)

<b>M/s. Nagar Palika Parishad,</b> Nagar Palika Parishad, Hapur, UP-245 101	Vs.	<b>ITO</b> Ward – 2(2)(3) Ghaziabad
<b>PAN No. AAALN 1136 A</b>		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Pramjeet Singh, C.A.
Revenue by	Shri Anshul, Sr. D.R.

Date of hearing:	30.07.2024
Date of Pronouncement:	14.08.2024

**ORDER**

**PER PRADIP KUMAR KEDIA, AM :**

The captioned three appeals have been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi dated 27.01.2023 arising from the assessment order

dated 21.02.2019 passed by the Ward TDS and Addl. Comm. TDS Ghaziabad (hereinafter referred to as 'AO') under Section 271CA and 271C of the Income Tax Act, 1961 (the Act) concerning Assessment Years 2017-18 and 2018-19 (ITA Nos.861 & 862/Del/2023).

2. The grounds of appeal raised by the assessee in ITA No.860/Del/2023 for A.Y. 2017-18 reads as under:

1. *“That under the facts and circumstances of the case the learned Assessing order has erred in initiating the proceeding. The initiation of proceedings is arbitrary, unjust, uncalled for illegal and against the provision of the act.*
2. *That under the facts and in law the learned Additional Commissioner of Income Tax has erred to work out Rs. 35,000/- as penalty, hence the levy of penalty deserve to be quashed.*
3. *That Assessee did not know the law about TCS provisions hence was dependent upon guidance of counsel for TDS provisions. The breach was technical and venial in nature. Since the tax was deposited the assessee was not in default. Hence, the penalty may please be deleted.*
4. *That Commissioner of Income Tax(Appeals) did not provide the proper opportunity of hearing. Hence, Commissioner of Income Tax(Appeals) Order is liable to be set aside.*
5. *The Appellant reserve the right to raise, add, modify or alter any grounds or grounds for adjudication of the appeals.”*

3. The grounds of appeal raised by the assessee in ITA No.861/Del/2023 for A.Y. 2018-19 reads as under:

1. *“That under the facts and circumstances of the case the learned Assessing order has erred in initiating the proceedings. The initiation of proceedings is arbitrary, unjust, uncalled for illegal and against the provision of the act.*

2. *That Assessing Order erred in law in invoking Section 271C which is not applicable in our case. Hence, Assessment Order deserves to be quashed.*
  3. *That under the facts and circumstance of the case the learned Additional Commissioner of Income Tax has not considered the rectification order passed under section 154, accepting the contention of assessee and deleting the interest for late deposit of tax. Hence, the levy of penalty is unsustainable.*
  4. *That Commissioner of Income Tax(Appeals) did not provide the proper opportunity of hearing violating the principles of natural justice. Hence, Commissioner of Income Tax(Appeals) Order is liable to be set aside.*
  5. *The Appellant reserve the right to raise, add, modify or later any other grounds for adjudication of the appeals.”*
4. The grounds of appeal raised by the assessee in ITA No.862/Del/2023 for A.Y. 2018-19 reads as under:
1. *“That under the facts and circumstances of the case the learned Assessing order has erred in initiating the proceeding. The initiation of proceedings is arbitrary, unjust, uncalled for illegal and against the provision of the act.*
  2. *That under the facts and in law the learned Additional Commissioner of Income Tax has erred to work out Rs. 36,775/- as penalty, hence the levy of penalty deserve to be quashed.*
  3. *That Assessee did not know the law about TCS provisions hence was dependent upon guidance of counsel for TDS provisions. The breach was technical and venial in nature. Since the tax was deposited the assessee was not in default. Hence, the penalty may please be deleted.*
  4. *That Commissioner of Income Tax(Appeals) did not provide the proper opportunity of hearing. Hence, Commissioner of Income Tax(Appeals) Order is liable to be set aside.*
  5. *The Appellant reserve the right to raise, add, modify or alter any grounds or grounds for adjudication of the appeals.”*

5. Briefly stated, the assessee is a local authority and works in coordination with the State Govt. In the course of survey proceedings under section 133A of the Act, the Assessing Officer found that assessee has failed to collect tax at source (TCS) on parking lot being given on license amounting to Rs.35,000/- for F.Y. 2016-17 relevant to A.Y. 2017-18 in question. The breach of similar amounts has been committed in other appeals. Order under section 271CA of the Act dated 21.02.2019 concerning A.Y. 2017-18 and similar orders in other years were passed seeking to impose penalty for failure to collect tax at source required under provision of Chapter XVII-BB of the Act.

6. The learned Counsel submitted at the outset that as soon as the discrepancy and deficiency came to the notice of the assessee, the mistake was cured and assessee duly collected the TCS and deposited the same to the Govt. account for which the copy of challan was also furnished before the lower authorities. The learned Counsel for assessee thus submits that there was no willful default in compliance of the TCS provisions and the breach is technical in nature. The learned Counsel also submits that assessee is a Nagar Palika Parishad supervising the area of Hapur. It was pointed out that the money from contract on parking lot is collected on behalf of the Govt. from citizens and the same is expended on the welfare of the citizens of the town. The assessee is a non-profit organization and has constraints, at times, in correct understanding of tax laws. No advise was received towards collection of TCS on such payment and as soon as the default was pointed out, the assessee made swift compliance.

7. In the light of submission made on behalf of the assessee, we are of the considered view that assessee cannot be treated as assessee in default *per se* in the

present circumstances and there exists reasonable cause giving rise to such technical default.

8. In this view of the matter, the penalty imposed under section 271CA/271C in all the three captioned appeals stands deleted.

9. In the result, all the three captioned appeals are allowed.

**Order was dictated and pronounced in the open court on 14.08.2024**

**Sd/-**

**(YOGESH KUMAR US)  
JUDICIAL MEMBER**

**Sd/-**

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Date:- 14.08.2024

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI