

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1821/Del/2022
Assessment Year: 2012-13

Parsvnath Developers Ltd., Vs JCIT,
Parsvnath Tower, Range-76,
Near Shahdara Metro Station, New Delhi..
New Delhi – 110 032.

PAN: AAACP0743J

(Appellant)

(Respondent)

Assessee by : Shri Paritosh Jain, Advocate
Revenue by : Ms Harpreet Kaur Hansra, Sr.DR
Date of Hearing : 02.12.2024
Date of Pronouncement : 18.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the assessee against the order dated 08.06.2022 of the Commissioner of Income-tax (Appeals)-30, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.10509/2017-18 arising out of the appeal before it against the order dated 26.02.2018 passed u/s 271C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the JCIT, Range-76, New Delhi (hereinafter referred to as the Ld. AO).

2. On hearing both the sides, it comes up that the penalty order has been passed u/s 271C of the Act as a total short deduction of Rs.1,72,36,872/- was noticed in the TRACES account of the assessee for FY 2007-08 to 2014-15, 2015-16 and 2016-17. This short deduction was found to be in respect of statement filed in quarter Q1, Q2, Q3 and Q4 of FY 2007-08 to 2013-14, 2015-16 and 2016-17 in Form 26Q/24Q. Accordingly, penalty proceedings were initiated vide notice dated 01.08.2017 and 15.12.2017.

2.1 The ld. AR re-asserted the submissions as were made before the CIT(A) and the ld. DR, on the contrary, relied on the orders of the ld. tax authorities below. A copy of TDS exemption certificate for FY 2011-12 issued by Delhi Metro Rail Corporation Ltd. was also filed before us showing that TDS exemption certificate u/s 197 of the Act for FY 2011-12 relating to TDS @1% for payment received on rent u/s 194I of the Act was issued and one of the beneficiaries (deductor) was the assessee.

3. The penalty order mentions that the assessee was given sufficient opportunity for explanation and allegedly nothing was brought before the AO to prove any circumstances for non-deduction or non-deposit of tax at source was beyond the control of the assessee company. So penalty was imposed. However, before the CIT(A), in regard to the present assessment year 2012-13 with corresponding financial year 2011-12, the penalty for four quarters totaling to

Rs.12,62,791/- was challenged and the details of penalty for respective quarters of FY 2011-12 is as under:-

F.Y.	Q1	Q2	Q3	Q4	Total
2011-12	29,094/-	2,03,332/-	2,84,901/-	7,45,464/-	12,62,791/-

4. The first objection taken by the assessee is that the clubbing of penalties imposed for FY 2007-08 onwards was not legal. There should have been distinctive and separate orders. It was submitted that it is a case of mechanical invocation of provisions of penalty.

5. Then, with regard to the penalties for respective quarters, the assessee had explained that in the Q1 penalty of Rs.29,094/- is imposed for which it was submitted by the assessee in Quarter 1 of the financial year 2011-12, demand of short deduction of tax of Rs 29,094/-in Quarter 1 of the financial year 2011-12 is consist of demand of Rs 29,013/- in TDS return Form type 260 and Rs 80/- in TDS return Form type 27EQ. As regards demand of Rs.29,014/-in TDS return Form type 26Q, it was submitted that the appellant has made some payments to various parties in which it was liable to deduct tax at source as per the provisions of section 194C of the Act. The detail of parties to whom payments made, TDS deducted & demands of short deduction raised thereon were provided. On perusal of details, it is evident that demand of Rs. 29,014/- reflecting in TRACES account of the appellant is mainly due to inadvertent mistake committed by the accountant of the appellant at the time of filing of

TDS return. As regards demand of Rs.80/- in TDS return Form type 27EQ, it was submitted that the said demand was also raised due to some inadvertent mistakes.

5.1 As regards demand of short deduction of tax of Rs 2,03,332/- in Quarter 2 of the financial year 2011-12, it was submitted that the said demand was raised due to "other reasons ie. Threshold Tax, Rate, etc". It is pertinent to note that the appellant has made some payments to various parties on which it was liable to deduct tax at source as per the provisions of section 194C and 194I of the Act and detail of said payments made and tax deducted thereon and demand raised of short deduction of tax and reason of short deduction was provided to CIT(A). Further, as regard demand of Rs.1,79,191/- out of total demand of Rs.2,03,333/- in Quarter 2 for the financial year 2011-12, it is submitted that the appellant has made payment of Rs.1,79,19,102/- to Delhi Metro Rail Corporation Ltd on it has deducted TDS @1% which comes to Rs.1,79,191/- under section 194I of the Act. The appellant has deducted tax at source @ 1% of the said party on the basis of lower deduction certificate available with the appellant company. However, the accountant of the appellant company has inadvertently not filled the lower deduction of tax certificate details in TDS returns resulting in demand of short deduction of tax at source of Rs 1.79,191/- as system has calculated liability to deduct tax at source @ 2% on said payments instead of @1%.

5.2 As regards demand of short deduction of tax of Rs 2,84,901/-raised due to "other reasons i.e. Threshold Tax, Rate, etc", in Quarter 3 for the financial year

2011-12, it was submitted that the appellant has made some payments to various parties in which it was liable to deduct tax at source as per the provisions of section 194C and 194I of the Act. Details of said payments made and tax deducted thereon and demand raised of short deduction of tax and reason of short deduction was provided to CIT(A). Further, as regard demand of Rs 2,59,184/- out of total demand of Rs. 2,84,901/-in Quarter 3 for the financial year 2011-12, it is submitted that the appellant has made payment of Rs 2,59,18,361/- to Delhi Metro Rail Corporation Ltd on it has deducted TDS @1% which comes to Rs. 2,59,184/- under section 194I of the Act. The appellant has deducted tax at source @ 1% of the said party on the basis of lower deduction certificate available with the appellant company. However, the accountant of the appellant company has inadvertently not filled the lower deduction of tax certificate details in TDS returns resulting in demand of short deduction of tax at source of Rs.2,59,184/- as system has calculated liability to deduct tax at source 2% on said payments instead of @1%.

5.3 As regards demand of short deduction of tax of Rs 7,46,464/-in Quarter 4 of the financial year 2011-12, it was submitted that the said demand is consist of demand of Rs 2,70,193/- in TDS return Form type 26Q and Rs 4,76,271/- (actual Rs 5,01,380/-) in TDS return Form type 24Q. Further, demand of Rs.2,70,193/-in TDS return Form type 26Q is consist of demand of Rs.10,000/- raised due to PAN error and demand of Rs 2,60,193/-raised due to other reasons. As regard demand of Rs 10,000/- raised due to PAN error in TDS

return Form type 26Q out of total demand of short deduction of tax of Rs.7,46,464/- in Quarter 4 of the financial year 2011-12, it is submitted that the company has made some interest payments of Rs.1,00,000/- to M/s P.S. Rekhi on which it has deducted tax at source @ 10% as per the provisions of section 194A of the Act in Quarter 4 of the financial year 2011-12. The accountant of the appellant company has inadvertently not filled the Permanent Account Number of the deductee i.e., M/s P.S. Rekhi in TDS return. Due to "PAN error" in filing of TDS return, demand for short deduction of tax at source of Rs 10,000/- was appearing on TRACES account of the appellant as system has calculated liability to deduct tax at source @ 20% on interest payment of Rs.1,00,000/-. As regards demand of Rs 2,60,193/- raised due to other reasons in TDS return Form type 26Q out of total demand of short deduction of tax of Rs 7,46,464/-in Quarter 4 of the financial year 2011-12, It is submitted the appellant has made some payments to various parties in which it was liable to deduct tax at source as per the provisions of section 194C and 194I of the Act. Detail of said payments made and tax deducted thereon and demand raised of short deduction of tax and reason of short deduction were provided to the CIT(A). Further as regard demand of Rs.2,41,426/ out of total demand of Rs.2,60,193/- in TDS return Form type 26Q in Quarter-4 for the financial year 2011-12, it is submitted that the appellant has made payment of Rs.2,41,42,586/- to Delhi Metro Rail Corporation Ltd on it has deducted TDS @1% which comes to Rs.2,41,426/- under section 194I of the Act. The

appellant has deducted tax at source @ 1% of the said party on the basis of lower deduction certificate available with the appellant company. However, the accountant of the appellant company has inadvertently not filled the lower deduction of tax certificate details in TDS returns resulting in demand of short deduction of tax at source of Rs. 2,41,426/ as system has calculated liability to deduct tax at source @ 2% on said payments instead of @1%.. As regard demand of Rs 4,76,271/- (actual Rs.5,01,380/-) out of total demand of short deduction of tax of Rs 7,46,464/- in Quarter 4 of the financial year 2011-12 in TDS return Form type 24Q, it was submitted that the demand of Rs.5,01,380/- consist of demand of Rs 3,72,003/-due to inadvertent mistake committed by the accountant of the appellant in furnishing PAN of the deductee in TDS return, due to which the department has calculated liability to deduct TDS @ 20% while the appellant has deducted TDS at the rates specified under the provisions of the Act. Further as regards, demand of Rs 1,29,377/-out of total demand of Rs 4,76,271/- (actual Rs. 5,01,380/-) was raised due to "Other reasons" in Quarter 4 of the financial year 2011 12. The appellant has made payment of salary to various employees of the company in which it was liable to deduct tax at source as per the provisions of section 192 of the Act in Quarter 4 of financial year 2011-12. However, while computing tax liability of said employees under the provisions of the Act, the accountant of the appellant company has inadvertently failed to charged education cess @ 3%, resulting in demand of short deduction of tax at source of Rs 1,29,377/- was raised in Quarter 4. Details

of persons to whom payments made, tax deducted and demand of short deduction of tax raised thereon were provided. Final demand as per TRACES is Rs.9,10,788/-. Thereafter, the appellant has corrected the said errors in TDS return by filing revised TDS return and demand of short deduction of tax at source of Rs.12.62,791/-reflecting in TRACES portal of the appellant at the time of imposing penalty, has been reduced to Rs. 9,10,788/-. Detail of old demand on which penalty under section 271C of the Act has been levied and detail of revised demand as per TRACES account of the appellant for the financial year 2011-12 is as under-

Quarter	Old Demand as per TRACES	NEW Demand As per TRACES
1.	29,094	29,094
2.	2,03,332	2,03,332
3.	2,84,901	2,84,901
4.	7,46,464	3,93,461
Total	12,62,79	9,10,788

6. It is pertinent to note that learned JCIT has imposed penalty under section 271C of the Act for short deduction of Rs.12,62,791/- for the financial year 2011-12 as reflected in TRACES account of the appellant while the said demand has been reduced to Rs. 9,10,788/-by filing revised TDS return. Further alleged demand of short deduction of tax at source, if any for the financial year 2011-12 appearing on the TRACES account of the appellant was due to inadvertent mistake made by the accountant of the appellant company as discussed above.

7. Then we find that Learned JCIT has passed common order for imposing penalty under section 271C of the Act, for 9 FYs i.e. 2007-08 to 2013-14 and 2015-16 to 2016-17 without appreciating the fact that as per the provisions of the Income tax Act, 1961 every assessment year is separate and distinctive from each other. Ld. DR was unable to justify how common notice for different AY and a common order with a consolidated penalty can be imposed under the Act. In fact the Act mandates filing of quarterly statements of TDS compliances. The provision of penalty u/s 271C of the Act for failure to deduct tax at source sanctions a levy of penalty for each default as the penalty sanctioned to be imposed is *'a sum equal to the amount of tax which such person failed to deduct or pay'*. Thus every default is a separate cause of action for levy of penalty and since the Act requires filing of relevant returns of TDS compliances periodically, then the competent authority can levy penalty taking cognizance of defaults on the basis of these returns only. Therefore, as per the Act, the penalty notice and proceedings of defaults covered in one reportable period can be clubbed but consolidated penalty notice, penalty proceedings and penalty order u/s 271C of the Act, are not permissible. Thus the consolidated penalty order covering penalty for the relevant AY 2012-13, is not sustainable in law.

8. Even otherwise, we find that the ld. CIT(A) was not satisfied with the explanation of assessee and held as follows:-

"The appellant submitted that demand of short deduction of tax at source of Rs.12,62,791/- for the FY 2011-12, quarter wise was as taken in the penalty order was as under:

<i>Quarter</i>	<i>Amount of alleged Short deduction of TDS</i>
1.	29064
2.	2,03,332
3.	2,84,901
4.	7,46,464
<i>Total</i>	<i>12,62,791</i>

The appellant further submitted that the demand was rectified on TRACES and the final demand as per TRACES, quarter-wise was as under:-

<i>Quarter</i>	<i>Old Demand as TRACES per</i>	<i>NEW Demand As per TRACES</i>
1.	29,094	29,094
2.	2,03,332	2,03,332
3.	2,84,901	2,84,901
4.	7,46,464	3,93,461
<i>Total</i>	<i>12,62,79</i>	<i>9,10,788</i>

The appellant was considered in default for the imposition of penalty u/s. 271C of the Income Tax Act for short deduction of Rs. 12,67,291/-for the F.Y. 2011-12. However, the short deduction was rectified/revised and reduced to Rs.9,10,788/. The appellant submitted screenshots of revised default summary in the paper book which is placed from page no. 10-15. The appellant has also given detailed justification for short deduction in respect of revised amount of Rs.9.10,788/ The appellant stated that short deduction was mainly due to

inadvertent mistake of the accountant of the appellant. The justification submitted by the appellant has been considered. I find that the inadvertent mistake of the accountant of the appellant in so many instances resulting into short deduction of TDS cannot be considered a reasonable justification. Accordingly. I am of the opinion that the appellant is liable for penalty in respect of revised amount of default i.e., Rs.9,10,788/- Accordingly, the penalty u/s. 271C of the Act imposed on the appellant for short deduction of tax at source is confirmed to the extent of Rs.9,10,788/ and the balance amount of Rs.3,56,503/ is directed to be deleted.”

9. We are of the considered view that the Id.CIT(A) has fallen in error in not appreciating the fact that it was not a case of no deduction, but, short deductions for which the assessee had explained that due to some errors committed by the Accountant, the discrepancies occurred leading to short deposits.

10. The Id. tax authorities below have been too rigid to expect an explanation overlooking the principles of human behavior, conduct and prudence. We are of the considered view that arithmetical and clerical mistakes are always likely to happen in accounting and reporting transactions to the Id. Tax authorities. No malice can be imputed on the basis that the mistake was a recurring one or that entity is a big corporate undertaking having very qualified personnel. The lack of competence or negligence of individuals performing duties of a corporate entity should be considered sufficient justification in case of short deductions. Ld. Tax authorities should have a realistic attitude to understand the ground realities. Provisions for advance tax deposits, TDS or TCS are mode of

collecting taxes and the provisions in the Act concerning them should be liberally construed and certainly traces of malice should be visible from the facts to justify penalty for short deduction. Thus, we are of the considered view that the imposition of penalty was not justified. Accordingly, the grounds raised are allowed and the **appeal of the assessee is allowed**. Impugned levy of penalty is quashed.

Order pronounced in the open court on 18.12.2024.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 18th December, 2024.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi