IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: HYBRID MODE

BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM

ITA No. 113 & 114 /Jodh/ 2024
Assessment Year : 2013-14 & 2014-15

The ITO TDS, Udaipur Rajasthan-313001	Vs.	The Deputy Conservator of Forest South Van Bhawan Parisar, In front of Mohta Park, Chetak Circle Udaipur, Rajasthan
PAN NO: JDHD01240B		
Appellant		Respondent

Assessee by : Shri Amit Kothari, C.A
Revenue by : Shri Ajay Malik, CIT DR

Date of Hearing : 18/03/2025
Date of Pronouncement : 24/03/2025

आदेश/Order

PER LALIET KUMAR, J.M:

Both the above appeals have been filed by the Revenue against the respective orders of the Ld. CIT(A) -4, Udaipur each dt. 16/01/2024 pertaining to Assessment Years 2013-14 & 014-15 respectively.

2. Since the issues involved in both the above appeals are common and were heard together so they are being disposed of by this consolidated order for the sake of convenience and brevity.

3. With the consent of both the parties, we shall take up the appeal in 113/Jodh/2024 for A.Y. 2013-14 as a lead case for discussion wherein the Revenue has raised the following ground:

> 1. *Whether the Ld. CIT(A) was justified in deleting the levied tax demand u/s 201(1)/201(1A) of the I.T. Act, 1961 of Rs.3,45,72,332/- for F.Y. 2012-13 on the grounds that payments made to these Van Samitis are not contract payments under the provisions of section 194C of the I.T. Act, 1961. These VFPMCs do not fall into category of State Government or Local Authority as per Section 10(20) or section 10(46) of the Income Tax Act or under any other sub-section of section 10 nor they are registered*

as trust as per provisions of section 11 and 12 of the Income Tax Act, 1961. Since these EDCs/VFPMCs are not registered as Co-operative Society, the provisions of Section 80P of the Income Tax Act, are also not applicable on them. Hence by virtue of their creation they are not falling in any category whose income is subject to be exempted for payment of Income taxes or they are likely to receive 100% deduction on the same in view of the CBDT circular no 502 dated 27.01.1988.

4. Briefly the facts of the case are that the Revenue has filed an appeal against the order of the CIT(A) dated 16/01/2024, wherein the CIT(A) deleted the tax demand of Rs. 3,45,72,332/- under Section 201(1)/201(1A) of the Income Tax Act, 1961, for the Financial Year 2012-13. The Revenue contends that the CIT(A) erred in holding that payments made to Van Suraksha and Prabandh Samitis (VFPMCs) were not contract payments under Section 194C of the Income Tax Act, 1961. The Revenue argues that the VFPMCs do not qualify as State Government or Local Authority under Section 10(20) or Section 10(46) of the Income Tax Act, nor are they registered as trusts under Sections 11 and 12 or as cooperative societies under Section 80P. Therefore, the payments made to them are subject to TDS under Section 194C.

5. Against the order of the Ld. AO the assessee went in appeal before the Ld. CIT(A) who has deleted the said demand by stating that the VFPMCs are not contractors under Section 194C, as they are formed under the Rajasthan Forest Act, 1953, and function as self-help groups for forest conservation and development. The payments made to VFPMCs are not contract payments but are reimbursements for work done under the joint forest management policy of the State Government.

5.1 Ld. CIT(A) also relied upon the CBDT Circular No. 502 dated 27.01.1988, which states that payments under schemes like NREP/RLEGP, executed with the participation of local communities, do not attract TDS under Section 194C. Ld. CIT(A) also relied upon the decision of the ITAT Jaipur Bench in the case of ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer (ITA No. 358-360/JP/2023), where it was held that payments to VFPMCs are not contract payments under Section 194C.

6. Against the order of the Ld. CIT(A) the Revenue in appeal before us.

7. During the course of hearing the Ld. DR stated that the order passed by the Ld. CIT(A) , after relying upon the decision of the Coordinate Bench in the case of ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer (ITA No. 358-360/JP/2023) ,is not in accordance with law as the revenue is appeal against that order.

8. Per contra the Ld. AR submitted that the Ld. CIT(A) has relied upon the decision the Coordinate Bench passed in case of ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer (ITA No. 358-360/JP/2023) and our attention was drawn to the pages 19 to 22 of the order passed by the Ld. CIT(A).

9. We have heard the rival contention and perused the material available on the record. Admittedly, the Tribunal in the case of ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer (ITA No. 358-360/JP/2023) vide order dt. 08/11/2023 has decided the issue in favour of the assessee by holding as under:

> *The bench noted that it is not under disputed that the institution of these EDCS/VFPMC groups or the nature of the work executed by them for the forest department. The only issue at hand is whether payments made for preservation of forest/reforestation by employing self help groups as per implementation of panchayti raj/NREP/RLEGP can be constituted as contract payment within the meaning of section 194C of the Act or not. The ld. AR of the assessee heavily relied upon the CBDT circular no. 502 (F.No. 385/49/86-ITC dated 27.01.1988). As per this circular, programmes under NREF/RLEGP are executed with the participation of the people and the Panchayati Raj institutions under the active supervision of the State Governments in conformity with the guidelines framed by the Central Government. There is no contract between the village committee/voluntary agencies and the State Governments, which is sine qua non for attracting the provisions of section 194C. Moreover, these schemes specifically ban the employment of contractors/middlemen for the execution of the work undertaken under these schemes. The Van Samitis are instituted as per Rajasthan State Government Notification S.No. F/7(39)/VAN/90 dated 17.08.1999 for various conservation / forestation programme consisting people of local / village area for their upliftment through employment. As per notification these Van Samitis are not in the category of 'thekedar' i.e. contractor. Thus, work was executed through participation of people and government as per notification framed by the State Government as per National Forest Policy (1988) of the Central Government. Therefore, conditions for exemption u/s 194C are satisfied in this case in view of the CBDT circular no. 502 (F.No. 385/49/86-ITC dated 27.01.1988), as these payments were not contract payments. The ld. AO merely based on the fact that these payments were made for the work and relying the statement given by the AAO u/s 131 fasten the liability u/s 194C which is against the various facets argued by the ld. AR of the assessee. It is to be noted here that in the statement recorded the AAO in answer to Question no 4 denied of involvement of contractor in his department. Considering these facts, and CBDT circular no 502 dated 27.01.1988, we are of the considered view that payments made to these Van Samitis are not contract payments and*

provisions of section 194C thus do not apply. We get support of this view from the decision of Delhi Bench of ITAT in ITA No.6844/Del./2019 (Assessment Year : 2015-16) in the case of M/s. Santur Infrastructure Pvt. Ltd., vs. ACIT, Range 77 New Delhi where in the coordinate bench has also considered these aspect of the matter. The relevant part of the decision is reiterated here in below :

9. We are of the considered view that when payment of EDC has been made by the assessee in accordance with licence granted by the DTCP, the payment made to HUDA was not made in pursuance of any work contract or under statutory obligation meaning thereby that when the assessee has no privity of contract with HUDA rather the assessee has privity of contract with DTCP, a Government Department of Haryana, as per Agreement (supra) and the HUDA has merely received the payment for and on behalf of DTCP, the assessee was not required to deduct the TDS.

10. Ld. DR for the Revenue by relying upon the Office Memorandum F.No.370133/37/2017-TPL dated 23.12.2017 issued by the Central Board of Direct Taxes (CBDT) contended that there is no ambiguity that HUDA is a taxpayer entity under the Income tax Act and as such, TDS provisions would be applicable on EDC payable by developer to HUDA.

11. When we examine aforesaid contention raised by the ld.DR for the Revenue in the light of the facts and circumstances of the case in which EDC have been paid to HUDA for Financial Years 2013-14, 2014-15, 2015-16 & 2016-17 (upto December 2016) as mentioned by the ld. CIT (A) in para 2.1 of his order, it goes to prove that prior to 23.12.2017, the date of CBDT circular, there was no clarity whatsoever as to the deduction of tax on EDC. When there was no clarity with the assessee prior to 23.12.2017, if TDS was to be deducted by the assessee on payment of EDC, it provided a "reasonable cause" u/s 273B of the Act that TDS was not required to be deducted.

12. Ld. AR for the assessee contended that DTCP had issued a clarification dated 29.06.2018 to the effect that no TDS was/is required to be deducted in respect of payment of EDC and relied upon the order passed by the coordinate Bench of the Tribunal in case of RPS Infrastructure Ltd. vs. ACTI in ITA Nos.5805, 5806, 5349/Del/2019 order dated 23.07.2019 wherein it is held that, "on the basis of letter supra issued by DTCP that the letter covers both past and future transactions and TDS was not required to be deducted." We have perused the order passed by the Tribunal in case of RPS Infrastructure Ltd. (supra) in which letter (supra) has been examined, it is clear that TDS was/is not required to be deducted in respect of deduction of EDC. So, in view of the matter, we are of the considered view that when DTCP, a Department of Government of Haryana, has itself clarified not to deduct the TDS, no penalty is leviable u/s 271C on the assessee.

13. Even otherwise, for argument sake, even if it is assumed that tax is required to be deducted on EDC but not deducted under bonafide belief that the provisions contained u/s 271C are not attracted, no penalty can be levied.

14. Hon'ble Supreme Court in the case of CIT vs. Bank of Nova Scotia 380 ITR 550 upheld the findings returned by the tribunal that, "if there is no contumacious conduct of the assessee, penalty u/s 271C cannot be levied." Operative part of the judgment supra is extracted for ready perusal 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 (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 9 ITA No.6844/Del./2014 Tax (Appeals) as well as by the Income Tax Appellate Tribunal. Thus, we see no merits in the appeal and it is accordingly dismissed."

15. Furthermore, coordinate Bench of the Tribunal in case of DCIT (TDS), ACIT (TDS) and JCIT (TDS), Dehradun vs. The Joint Secretary Organizing Committee for Winter Games also decided the identical issue by relying upon the decision rendered by Hon'ble Supreme Court in case of CIT vs. Bank of Nova Scotia (supra) and deleted the penalty u/s 271C by returning 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 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."

16. In view of what has been discussed above, we are of the considered view that firstly, the assessee was not required to deduct TDS as the payment of EDC was not made out of any statutory and 10 ITA No.6844/Del./2014 contractual liability to HUDA with whom the assessee has no privity of contract; secondly, the assessee has reasonable cause for non-deduction of tax at source by the assessee company; thirdly it is not the case of the Revenue authorities that the assessee has intentionally avoided the deduction of TDS by bringing on record contumacious conduct of the assessee; and fourthly, with continuous clarifications by the CBDT and DTCP discussed in the preceding paras, the issue became debatable if the TDS is to be deducted or not on the EDC providing reasonable cause to the assessee not to deduct the TDS. Consequently, penalty levied by the AO and confirmed by the ld. CIT (A) is not sustainable in the eyes of law, hence ordered to be deleted. So, the appeal filed by the assessee is allowed.

In the light of the discussion made and respectfully following the similar view taken by the coordinate bench of Delhi we do not find any infirmity in the order of the ld.

CIT(A). Based on these observation the appeal filed by the revenue stands dismissed.

9.1 We find that no contrary decision has been brought to our notice of any superior court after the decision of the Tribunal in the case of *ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer* (ITA No. 358-360/JP/2023). As there is no contrary decision of any superior court therefore the said decision still holds good and is definitely binding on the CIT(A) and the AO.

9.2 Further more we may also mention the decision of the Hon'ble Telangana High Court in case of Mylan Laboratories Ltd. [2022] 137 taxmann.com 178 (Telangana wherein the Hon'ble Telangana High Court has held that the decision of the Tribunal is binding on the AO / CIT(A).

34. We are afraid such a view taken by the Assessing Officer can be justified. Rather, it is highly objectionable for an Assessing Officer to say that decision of the Income Tax Appellate Tribunal is not acceptable; and that since it has been appealed against, the issue of allowability of depreciation on goodwill has not attained finality. Unless there is a stay, order/decision of the jurisdictional Income Tax Appellate Tribunal is binding on all income tax authorities within its jurisdiction.

35. In Union of India v. Kamlakshi Finance Corporation Ltd. 1992 taxmann.com 16, Supreme Court held and reiterated that the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not acceptable to the department, which in itself is an objectionable phrase, and is the subject matter of an appeal can be no ground for not following the appellate order unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to the assessee and chaos in administration of the tax laws.

36. Following the above decision, Supreme Court again in Collector of Customs v. Krishna Sales (P.) Ltd. 1994 Supp. (3) SCC 73, reiterated the proposition that mere filing of an appeal does not operate as a stay or suspension of the order appealed against. It was pointed out that if the authorities were of the opinion that the goods ought not to be released pending the appeal, the straight-forward course for them is to obtain an order of stay or other appropriate direction from the Tribunal or the Supreme Court, as the case may be. Without obtaining such an order they cannot refuse to implement the order under appeal.

37. Following the above decisions of the Supreme Court, a Division Bench of the Bombay High Court in Ganesh Benzoplast Ltd. v. Union of India 2020 (374) ELT 552 held that non-compliance of orders of the appellate authority by the subordinate original authority is disturbing to say the least as it strikes at the very root of administrative discipline and may have the effect of severely undermining the efficacy of the appellate remedy provided to a litigant under the statute. Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities.

38. This principle has been reiterated by the Bombay High Court in Himgiri Buildcon & Industries Ltd. v. Union of India 2021 (376) ELT 257.

> *39. Therefore, the stand taken by* ***the Assessing Officer that since the decision of the Income Tax Appellate Tribunal in the case of the petitioner itself for the assessment year 2014-15 has been appealed against the issue in question has not attained finality, is not only wrong but is required to be deprecated in strong terms being highly objectionable****.*

Respectfully following the decision of the Coordinate Bench in the case of of *ITO, TDS Ajmer vs. Divisional Forest Officer, Ajmer* (ITA No. 358-360/JP/2023) and Mylan Laboratories Ltd. **[**2022] 137 taxmann.com 178 (Telangana)we do not find any merit in the appeal of the Revenue and accordingly dismiss the present appeal filed by the Revenue.

10. Both the parties fairly submitted that the facts and circumstances of other appeal i.e ITA No. 114/ Jodh/2024 are exactly identical to the Appeal in ITA No. 113/Jodh/2024 and similar contentions raised therein may be considered, therefore, our findings and directions given in ITA No. 113/Jodh/2024 shall apply mutatis mutandis to other appeal also.

11. In the result, both the above appeals filed by the Revenue are dismissed.

(Order pronounced in the open Court on 24/03/2025)

Sd/- **Sd/-**

(DR. MITHA LAL MEENA) **(LALIET KUMAR)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**
AG

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar