

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SMT BEENA PILLAI, JUDICIAL MEMBER

ITA Nos.4837 to 4839/Del/2015
Assessment Years: 2011-12 to 2013-14

Addl.CIT (TDS),
CGO-1, Hapur Chungi,
Ghaziabad.

Vs. The Principal Officer,
M/s Jaypee Sport International Ltd.,
Sector-128,
Noida.
PAN: AABCJ9037E

ITA Nos.4291 to 4293/Del/2015
Assessment Years: 2011-12 to 2013-14

M/s Jaypee Sport
International Ltd.,
Sector-128,
Noida.
PAN: AABCJ9037E

Vs. DCIT (TDS),
Noida.

ITA Nos.4840 to 4842/Del/2015
Assessment Years: 2011-12 to 2013-14

Addl. CIT (TDS),
CGO-1, Hapur Chungi,
Ghaziabad.

Vs. M/s Jaypee Infratech Ltd.,
Sector-128,
Noida.
AABCJ9042R

(Appellants)

(Respondents)

Assessee By : Shri Ashwani Kumar Garg, Advocate
Department By : Smt. Paramita Tripathy, CIT, DR

Date of Hearing : 23.11.2017
Date of Pronouncement : 23.11.2017

ORDER

PER R.S. SYAL, VP:

This batch of nine appeals comprises of six cross appeals in respect of Jaypee Sports International Ltd. relating to assessment years 2011-12 to 2013-14 and the remaining three appeals by the Revenue in respect of Jaypee Infratech Ltd. for assessment years 2011-12 to 2013-14. All these appeals involve a solitary issue of confirmation/reduction of penalty u/s 271C of the Income-tax Act, 1961 (hereinafter also called ‘the Act’).

Jaypee Sports International Ltd.

2. Facts of this assessee relating to the assessment year 2011-12 are that a Survey u/s 133A of the Act was conducted on the assessee on 24.02.2014 to verify the applicability of TDS provisions. During the course of such Survey, it transpired that the assessee made payments of Lease rent and Interest to Yamuna Expressway Industrial Development Authority (YEIDA) without deduction of tax at source u/s 194I and 194A

respectively of the Act. An order u/s 201(1)/201(1A) of the Act was passed. Pursuant to that, penalty was imposed u/s 271C of the Act for a sum of Rs.7,55,18,885/-. The ld. CIT(A) waived the penalty in respect of liability of the assessee created in relation to Interest payment, but, upheld it in relation to Lease rent. That is how, both the sides are in appeal on their respective stands.

3. We have heard both the sides and perused the relevant material on record. It is observed that the order u/s 201(1)/201(1A) came up for consideration before the Tribunal. Vide order dated 31.08.2017 in ITA No.4279 to 4281/Del/2015 etc., the Tribunal has held the assessee liable for deduction of tax at source in respect of Lease rent and the liability in respect of Interest payment has been has been deleted. A copy of such order is placed on page 99 onwards of the paper book. In view of the fact that the liability of the assessee for deduction of tax at source in respect of Interest payment has been waived by the Tribunal, there remains no question of imposing any penalty u/s 271C in that respect. We, therefore, uphold the impugned order to this extent.

4. As regards TDS on payment of Lease rent, the Tribunal has decided this issue against the assessee by following the judgment of the Hon'ble Delhi High Court in *Rajesh Projects (India) (P) Ltd. vs. CIT-TDS (2017) 78 taxmann.com 263 (Del)*.

5. Before considering the sustainability or otherwise of penalty u/s 271C in respect of Lease rent, it is necessary to record the relevant factual matrix. The assessee was given some land on lease for a period of 90 years. The assessee was free to make any construction on such land. Annual lease rent was paid for such land, which the assessee treated as not attracting the provisions of section 194-I. It is in respect of such payment of lease rent that the issue has been decided by the Tribunal against the assessee by following the judgment of the Hon'ble Delhi High Court, which was delivered on 16.02.2017. Assessment years under consideration are 2011-12 to 2013-14. Our attention has not been drawn towards any judgment prevalent at the material time casting obligation on the assessee to deduct tax at source under similar circumstances.

6. The Kolkata Bench of the Tribunal in *ITO vs. Earnest Towers (P) Ltd.*, vide its order dated 13.05.2015 (ITA No.265/Kol/2012), a copy of

which is available at page 72 onwards of the paper book, has held that payment of lease premium in respect of property on which development of the area of land was allowed, cannot convert lease premium into tenancy as per section 194-I of the Act. It is an admitted position that the assessee got possession of the land somewhere in the year 2008 and started paying rent without any deduction of tax at source. It was only pursuant to Survey carried out in the year 2014 that the assessee was held to be liable for deduction of tax at source in respect of such lease rent payment. The fact that the assessee did not deduct tax at source from the lease rental payments in preceding years, is not disputed.

7. Section 273B of the Act provides that in case of a reasonable cause, penalty otherwise exigible, *inter alia*, u/s 271C of the Act, cannot be imposed. When we advert to the facts of the instant case, being - no deduction of tax at source made prior to the year of survey on 24.02.2014; no other order against the assessee requiring deduction of tax at source at that time when the assessee made payment of lease rental; and the judgment of the Hon'ble Delhi High Court delivered only on 16.02.2017 casting obligation for making deduction of tax at source -, it becomes

abundantly clear that the assessee entertained a *bona fide* belief that no tax withholding was required on lease rent payments. This belief, being a reasonable cause, for non deduction of tax at source in respect of lease rent payment, magnetizes the provisions of section 273B. Considering the provisions of section 271C read with section 273B, we hold that the penalty imposed u/s 271C is not sustainable.

8. Facts of the cross appeals for subsequent two assessment years, namely, 2012-13 and 2013-14 are, admittedly, similar. Following the view taken hereinabove, while upholding the action of the Id. CIT(A) in deleting the penalty u/s 271C in respect of Interest payment, we order to delete penalty in respect of Lease rent as well.

Jaypee Infratech Ltd.

9. These three appeals by the Revenue for assessment years 2011-12 to 2013-14 assail the deletion of penalty u/s 271C in respect of Interest payment made by the assessee.

10. It has been candidly accepted by the Id. DR that the facts leading to non-deduction of tax at source, *inter alia*, on Interest payment, being passing of order u/s 201(1)/201(1A) treating the assessee as assessee in

default and the Tribunal order waving such liability, are *mutatis mutandis* similar to those in respect of the Revenue's appeals in Jaypee Sports International Ltd., which have been disposed off in earlier paras. Following the view taken hereinabove, we uphold the deletion of penalty on Interest payment u/s 271C of the Act.

11. In the result, the three appeals of the assessee are allowed and six appeals of the Revenue stand dismissed.

Order pronounced in the open court on 23rd November, 2017.

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 23rd November, 2017.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.