

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA.Nos.5035, 5036, 5037 & 5038/Del./2016
Assessment Years 2011-12, 2012-13, 2013-14 & 2014-15

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| Noida Special Economic Zone Authority, Dadri Road, Phase-2, Noida. PAN AAALN0639A | vs | The Addl. CIT (TDS) CGO Complex-1, Hapur Road, Ghaziabad. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri H. Hasnain, A.R. |
| For Revenue : | Shri S.R. Senapati, Sr.DR |

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| Date of Hearing : | 08.03.2018 |
| Date of Pronouncement : | 08.03.2018 |

ORDER

PER BHAVNESH SAINI, J.M.

All the appeals by Assessee are directed against the common order of the Ld. CIT(A)-1, Noida, Dated 29th June, 2016, for the A.Ys. 2011-2012 to 2014-2015, challenging the levy of penalty under section 271C of the I.T. Act, 1961.

2. Briefly, the facts of the case are that as noted in the penalty order are that during verification in the case of the assessee, it was noticed that assessee has made payment of lease rent to Noida Authority, on which, no TDS was deducted as per the provisions of Section 194-I of the I.T. Act. The A.O. passed the orders under sections 201(1) / 201(1A) of the Act on 25th March, 2015 for non-deduction of tax and also initiated the penalty proceedings. The assessee submitted before A.O. the details with explanatory note that TDS deduction is not applicable in the case of Noida Authority. The A.O. however, in the order under section 201 of the Act observed that “*Noida Authority is not exempt as it is not Local Authority.*” The status of Noida Authority as Local Authority has not been accepted by the Hon’ble Allahabad High Court in the Writ Petition filed by Noida Authority. The A.O. did not accept the contention of assessee because assessee failed to deduct tax at source and has failed to prove any reasonable cause for such failure. The only reason put-forth by the assessee was that Noida Authority failed to clarify its position whether it is exempt under

provisions of Section 10(20) of the I.T. Act and also could not produce any 'Tax Exemption Certificate' under section 197 of the I.T. Act issued by the Income Tax Department. The A.O, therefore, held that assessee has no reasonable cause for non-deduction of TDS on the payments of lease rent paid to Noida Authority. The A.O. relied upon the decision of Hon'ble Kerala High Court in the case of US Technologies International Ltd., vs. CIT 195 Taxman 323 wherein it was held that "*failure to deduct tax and failure to remit recovered tax both will attract penalty under section 271C of the I.T. Act.*" The A.O, therefore, held that it is a fit case for levy of penalty and accordingly, levied the penalty for all the assessment years under appeal vide separate orders.

3. The Ld. CIT(A) decided all the appeals of the assessee through the common consolidated order. The Ld. CIT(A) noted that as regards facts, there is no dispute that assessee did not deduct tax on the amounts paid as lease rent to Noida Authority. The assessee submitted before Ld. CIT(A) that this

lapse happened because of the claim of Noida Authority that it was not liable for deduction of tax at source. The Ld. CIT(A) did not accept the contention of assessee because the deductee cannot influence the deductor in not following the law. The assessee also failed to prove any reasonable cause. Therefore, all the appeals of the assessee were dismissed.

4. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee made efforts to get clarification from Noida Authority whether its income is exempt under section 10(20) of the I.T. Act. But, there was no reply given by them. He has submitted that due to above reasonable cause, the assessee did not deduct TDS, therefore, penalty may not be imposed.

5. The Ld. D.R. however, objected to the submissions of the Learned Counsel for the Assessee because assessee without any justification did not deduct tax at source despite Writ Petition of Noida Authority was dismissed by Hon'ble Allahabad High Court on 28.02.2011 by holding that it is not Local

Authority. Therefore, it is a clear case of negligence on the part of the assessee in not deducting TDS. Therefore, penalty may be confirmed.

6. After considering the rival submissions, we do not find any merit in the appeals of the assessee. The penalty under section 271C of the I.T. Act is leviable for failure to deduct tax at source. Section 273B of the Act provides that penalty need not be imposed on the person or the assessee as the case may be for failure referred to above, if the assessee proves that there was a reasonable cause for the said failure. The A.O. in the order under sections 201(1) / 201(1A) of the I.T. Act, specifically noted the explanation of assessee in which it was submitted by assessee that assessee requested the Noida Authority to clarify their position whether their income is exempt, but, no reply have been received from them. Prior to it, the Writ Petition of Noida Authority was dismissed by Hon'ble Allahabad High Court. The A.O. ultimately, rejected the contention of assessee and passed the order for recovery of the short deduction with

interest. The assessee in the penalty proceedings claimed before A.O. that income of the Noida Authority exempt under section 10(20) of the I.T. Act, which fact was also has not proved by the assessee because it was incorrect. Therefore, the assessee had been negligent in not deducting TDS on lease rent paid to Noida Authority without any justification. Since assessee failed to prove its bonafide through any relevant and cogent evidence, therefore, assessee cannot take benefit of Section 273B of the I.T. Act as the assessee has failed to prove any reasonable cause for failure to comply with provisions of law. No interference is called for in the matter.

7. Learned Counsel for the Assessee lastly submitted that since the assessee moved an application under section 154 before Ld. CIT(A) for rectification of the impugned order, therefore, appeals of the assessee may be kept in abeyance. Learned Counsel for the Assessee submitted that assessee challenged for the first time before Ld. CIT(A) that the penalty orders are time barred. This issue is not arising out of the orders

of the authorities below and even the assessee has not moved any proper application for admission of additional ground before the Tribunal that assessment order is time barred, therefore, such plea of the assessee cannot be entertained at this stage. The request of the assessee for keeping the appeals in abeyance is accordingly rejected. In view of the above, appeals of the assessee have no merit and same are accordingly dismissed. However, we, direct the Ld. CIT(A) to expedite the disposal of application of assessee under section 154 of the I.T. Act independently without being influenced by this order.

8. In the result, all the appeals of the assessee are dismissed.

Order pronounced in the open Court.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 08th March, 2018

VBP/-

Copy to

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| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT 'E' Bench, Delhi |
| 6. | Guard File. |

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.