आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA No.500/Ind/2018
Assessment Year 2015-16

Shri Jitendra Sharma,
99, Shivampuri,
Bholaram Ustad Marg,
Bhawarkuan
Indore
PAN : AXPS9199P : Appellant

V/s

JCIT (Intl Taxation)
Ahmedabad : Respondent

ITA No.501/Ind/2018
Assessment Year 2015-16

Shri Bharat Sharma,
99, Shivampuri,
Bholaram Ustad Marg,
Bhawarkuan
Indore
PAN : ASSPS6586M : Appellant

V/s

JCIT (Intl Taxation)
Ahmedabad : Respondent

ITA No.502/Ind/2018
Assessment Year 2015-16

Shri Shatrughan Sharma,
99, Shivampuri,
Bholaram Ustad Marg,

Bhawarkuan
Indore
PAN : ASZPS7750A : Appellant

V/s

JCIT (Intl Taxation)
Ahmedabad : Respondent

Revenue by	Smt. Vinita Dubey, Sr.DR
Assessee by	S/Shri Manoj Munishi & Pankaj Shah, CAs
Date of Hearing	05.10.2020
Date of Pronouncement	14.10.2020

O R D E R

PER MANISH BORAD

The above captioned appeals filed at the instances of the assessee(s) pertaining to Assessment Year 2015-16 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-13 (in short 'Ld.CIT(A)'], Ahmedabad dated 24.04.2018 which are arising out of the order u/s 271C of the Income Tax Act 1961(In short the 'Act') dated 28.04.2017 framed by JCIT (Intl. Taxn.), Ahmedabad.

2. From perusal of the record we observe that common issue have been raised in all these three appeals relating to levy of penalty u/s 271(1)(c) of Act at Rs. 5,15,000/- in each case for the alleged wrong deduction of tax at source in the transaction of

purchase of immoveable property. As grounds raised in all these three appeals are similar, for convenience we are reproducing below the grounds raised by Shri Jitendra Sharma in Appeal No.500/Ind/2018;

Ground-I

1. *On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax (Appeals)-13, Ahmedabad ("CIT(A)") erred in exparte dismissing the appeal of the assessee for non prosecution and thereby confirming the addition made by the Assessing Officer.*
2. *He failed to appreciate that the notice of hearing was not served on the appellant and the appellant had himself requested for early hearing which remained unresponded.*
3. *Accordingly, the appellant prays that the said exparte order of learned CIT(A) being in violation of principles of natural justice be set aside and restored back for fresh hearing with adequate opportunity of hearing.*

Ground-II

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the penalty under Section 271C of the Act amounting to Rs.515000/-*
2. *The appellant prays that the said penalty be deleted.*

Ground-III

1. *On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the penalty under Section 271C by not appreciating the bonafide and reasonable cause for the deduction of tax at source under different provision.*
2. *The appellant prays that the said penalty be deleted.*

Ground-IV

The appellant craves lead to add, to amen, to alter and/or to delete all or any of the above grounds of appeal.

3. As the issues raised in these appeals are common, they are taken together for adjudication and are being disposed of by this consolidated order for the sake of convenience and brevity.

4. Brief facts of the case as culled out from the records and submitted by Ld. Counsel for the assessee are that the assessee namely Shri Jitendra Sharma and other two persons namely Shri Bharat Sharma and Shatrughan Sharma entered into an agreement/sale deed dated 24.10.2014 for transaction of purchase of immoveable property valuing at Rs.75 lakhs. This transaction was carried out through a broker. The name of the seller is Shri Manoj Gangwar. In the sale deed Shri Manoj Gangwar has mentioned his PAN, local address of Farukhabad, U.P and present address of Colorado, USA. All the three joint owners considering the total transaction value being more than Rs.50 lakhs, (though individually the consideration was Rs. 25 lakhs only) deducted tax at source @1% on the gross sale consideration and deposited it with Government treasury on 15.1.2015. Subsequently on receiving the

information from ITO (TDS-II), Indore the Ld. A.O examined the transactions of tax deducted at source. Ld. A.O observed that the seller is a non resident Indian therefore the tax to be deducted at source on the gross purchase consideration should have been 20.6% as provided in Section 195 of the Act. Since the assessee has not deducted tax at the correct rate he considered the assessee in default. However before the conclusion of the proceedings u/s 201(1)/201(1A) of the Act the respective assessee(s) deposited the due tax to be deducted u/s 195 of the Act along with the applicable interest. However the Ld. A.O initiated the penalty proceedings u/s 271C of the Act separately.

5. During the course of penalty proceedings though it was claimed by the assessee that in a bonafide belief it has deducted tax at source u/s 194I*A* of the Act, but the moment he came to know about the wrong rate of tax he deducted tax @20.6% u/s 195 of the Act and deposited the due amount with the applicable interest. But this submission of the assessee could not satisfy the Ld. A.O and he proceeded to levy penalty at Rs. 5,15,000/- in each case for the default of wrong deduction of tax at source. Aggrieved assessee preferred appeal before Ld. CIT(A) but could not succeed as the

reasonable cause mentioned by the assessee did not find any favour by the lower appellate authority.

6. Now all the three assessee(s) are in appeal before the Tribunal challenging the finding of Ld. CIT(A) confirming the levy of penalty u/s 271C of the Act at Rs. 5,15,000/- in each case for the default committed by the assessee(s) for wrong deduction of tax at source.

7. Ld. Counsel for the assessee referred to the paper book running from page 1 to 25 and relied on following written submissions :-

> 1.The Appellant is an individual and had purchased an immovable property in the year 2014-15 and had deducted the tax of the seller under Section 194IA of Act at the rate of one percent of the sale consideration and filed the TDS return on the date of deduction as prescribed.
>
> 2.The Assessee did not know the seller and the deal of property was done through a broker who got prepared the sale deed and other documents. The registered deed also bore Indian address of Farukhabad, U.P. as well as his abroad address however since the Assessee is a common individual unaware about technically separate TDS mechanism for resident and non resident of same transaction, he executed the deed after deducting 1% tax based on Section 194IA of the Act which is commonly known law and practice.

3.Subsequently the Appellant was informed that since the seller is having a foreign address stated in the deed he may be non resident Indian and therefore the tax was deductible under Section 195 of the Act.

4.When such impression was given to the Appellant, he immediately approached the broker and got the deposit of TDS of balance tax done under Section 195 and reported the same by obtaining TAN and filing TDS return.

5. The Appellant has acted bonafidely since

a. PAN of the seller nowhere indicates his residential status

b. The seller and buyers met each other for the first time in registrar office only through broker.

c. Requirement of Sub· Registrar office is to submit TDS certificate as per Section 194IA of Act which was furnished and accepted by Government department who are also not aware about the technical provisions of Section 195 of Act.

d. Immediately on becoming aware the Appellant ensured compliance in form of payment of full tax at source on transaction by recovering it from non-resident Indian as per Section 195 of the Act.

e. Be that as it may the seller may not be considered as non resident if he has stated a foreign address along with local address as residential status depends on stay as per conditions given in Section 6 of Act which have not been examined by the AO or any other authority.

6.The AO and CIT(A) has relied on some screenshot of mobile stating to be letter of seller received through email which is not known to the Appellant nor is submitted by it to the Department.

7. Since the fact about the foreign address of the seller was later came to appellant notice there after appellant deducted TDS 1% on immovable property rather than covering under section 195 at the rate 20%. As soon as the procedure for non resident came to notice, appellant acknowledged the demand raised by the department and deposited balance TDS along with interest levied thereon.

8. Propositions

a. No penalty should be levied since there was deduction of tax under a different section being 194IA instead of Section 195 of Act bonafidely as both sections apply on same transactions.

b. The deductor who is an individual common person was not knowing he residential status of seller being NRI (which has still not been established based on Section 6 of the Act) nor he was aware about different TDS provisions of Section 195 and acted as per common knowledge to deduct 1% TDS under section 194IA of the Act.

c. As regards the observation of CIT(A) that ignorance of law is no excuse it is submitted there is no such maxim known to law. Your kind attention is invited to decision of Supreme Court in case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh [1979] 118 ITR 326 wherein it was observed that there is no presumption that every person

knows the law. It is often said that everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law.

d. Penalty under Section 271C of Act is levied for non compliance of Chapter XVII-B of the Act however when the TDS is deducted and deposited with interest there is compliance of Chapter XVII - B on a whole basis and therefore the penalty should not be levied in such cases.

e. The deduction of tax under different provision and later deduction and deposit of full tax shows the bonafide conduct of Appellant 'which is a 'reasonable cause' on existence of which penalty under section 271C of Act is unwarranted as per Section 273B of the Act.

PRAYER

In view of above the Appellant prays that the impugned penalty be directed to be deleted

8. Per contra Ld. Departmental Representative vehemently argued and apart from relying the orders of both the lower authorities also submitted the fact that the seller is residing in USA and Non Resident Indian was very much in the knowledge of the buyers at the time of entering into sale agreement. She also submitted that the ignorance of law is no excuse and provisions of Section 271C of the Act are squarely applicable on the facts of the

instant case since the assessee has failed to deduct correct tax as required by the provision of Chapter XVII-B.

9. We have heard rival contentions and perused the records placed before us. The sole grievance raised by all the three assessee(s) namely S/Shri Jitendra Sharma, Bharat Sharma and Shartrughan Sharma are against the finding of Ld. CIT(A) confirming the levy of penalty at Rs. 5,15,000/- to each u/s 271C of the Act for low deduction of tax at source.

10. We observe that all three assessee(s) jointly planned to purchase an immoveable property valuing at Rs.75 lakhs. Consideration of Rs.25 lakhs each was paid by the buyers. Seller is the single person namely Shri Manish Gangwal. In the sale deed seller's local address is of Uttar Pradesh and the present address is at Colorado, USA. As claimed by the Ld. Counsel for the assessee this transactions was carried out through broker. The copy of PAN card of the seller was given who himself was available at the time of transaction. In the PAN card address is mentioned. No other documentary evidence of the residential status of the seller was shown.

11. Though the provisions of Section 194(IA) of the Act relates to deduction of tax at source on payment for transfer of immoveable property other than agriculture land and refers to the payment made by person being a transferee to the respective transferer if the consideration for transfer of immoveable property is Rs.50 lakhs or more, in the instant case all the three assessee(s) individually were paying the consideration of Rs.25 lakhs only (which is less than Rs.50 lakhs) as mentioned in Section 194IA) of the Act but still being at a safer side they deducted tax at source @1% of the purchase consideration and deposited it.

12. We further observe that subsequently when proceedings were carried out u/s 201(1)/201(1A) r.w.s. 195 of the Act and respective assessee(s) were brought to the notice that the seller is a Non Resident Indian they *bonafidely* deducted the TDS @20.6% (Tax + surcharge) of Rs. 5,15,000/- each on the payment of Rs.25 lakhs and also paid interest at Rs.1,03,000/- for the delay and in total all the three assessee(s) they deposited Rs. 6,18,000/- each before the conclusion of the proceedings and thus no demand was payable.

13. However Ld. A.O further initiated the proceedings u/s 271C for levy of penalty at Rs. 5,15,000/- in each of the case for low deduction of tax. Now the short issue remains is whether in these given circumstances as discussed above the Ld. A.O was justified in levying penalty on the assessee(s) u/s 271C of the Act.

14. Before proceeding further we will like to go through the finding of the Co-ordinate Bench of Mumbai in the case of *DCIT V/s Sms India Ltd (supra)* (2006) 7 SOT 424 Mum dated 30.11.2005 wherein similar issue has been dealt with respect to levy of penalty u/s 271C of the Act and the assessee had reasonable cause due to which there was short payment of tax and subsequently the assessee paid the remaining amount of short deducted tax and interest. The Hon'ble Tribunal decided in favour of the assessee confirming the finding of Ld. CIT(A) observing as follows :-

> *10. We have considered the submissions made by both the sides, material on record and orders of the authorities below. Admittedly, the assessee filed its annual salary return for each year in the prescribed forms within the time specified. It is also an admitted fact that in the earlier years the annual salary returns were accepted by the department as such. In the year under consideration the assessee was required to clarify the basis of deduction of tax under section 192 of the Act. It has been stated by the assessee's counsel that at this point only the assessee took*

professional advice relating to deduction of tax at source and when advised to deduct the tax on impugned payments the assessee paid the short deducted tax and interest thereon voluntarily and filed revised annual salary returns for all four years. The assessing officer levied the penalty mainly on the ground that the deposits of the short deducted tax was made after initiation of the proceedings and therefore, the same was in voluntary and also relied on the principle that ignorance of law was no excuse. From the facts of the case it is observed that the assessee filed return for all years within the time and once the return for first year was accepted as such, the belief on the part of the assessee that he rightly deducted the tax got strengthened and the same practice continued till the assessee was advised professionally otherwise and this leads to obvious inference that when the assessee was confronted with this issue for the first time he immediately acted and rectified the same. Therefore, in our considered opinion bona fide belief in short deduction of tax coupled with voluntary compliance in the term of depositing the same immediately on coming to know the same would constitute reasonable cause. The assessing officer also gave a finding that ignorance of law is no excuse but simultaneously it is also true that there is no presumption that everyone knows the law. What is important is the fact that the moment a person comes to know that he has committed a mistake and being a person of reasonable intelligence and ordinary prudence if he takes the corrective measures to rectify the same immediately, then it cannot be said that he acted deliberately with complete disregard to law. There is also considerable force in the contention of the assessee that non-recording of satisfaction by assessing officer in the order under section 201(1) with regard to the fact that case is fit for levy of penalty makes the levy of penalty void ab initio. In view of above discussion and in the totality of facts and circumstances of the case we are of the considered opinion that the findings of learned Commissioner of Income Tax (Appeals) in his appellate order are in accordance with law and therefore, we uphold the

order of learned Commissioner of Income Tax (Appeals). Thus, all grounds of revenue in all appeals are rejected.

11. We have considered the submissions made by both the sides, material on record and orders of the authorities below. Admittedly, the assessee filed its annual salary return for each year in the prescribed forms within the time specified. It is also an admitted fact that in the earlier years the annual salary returns were accepted by the department as such. In the year under consideration the assessee was required to clarify the basis of deduction of tax under section 192 of the Act. It has been stated by the assessee's counsel that at this point only the assessee took professional advice relating to deduction of tax at source and when advised to deduct the tax on impugned payments the assessee paid the short deducted tax and interest thereon voluntarily and filed revised annual salary returns for all four years. The assessing officer levied the penalty mainly on the ground that the deposits of the short deducted tax was made after initiation of the proceedings and therefore, the same was in voluntary and also relied on the principle that ignorance of law was no excuse. From the facts of the case it is observed that the assessee filed return for all years within the time and once the return for first year was accepted as such, the belief on the part of the assessee that he rightly deducted the tax got strengthened and the same practice continued till the assessee was advised professionally otherwise and this leads to obvious inference that when the assessee was confronted with this issue for the first time he immediately acted and rectified the same. Therefore, in our considered opinion bona fide belief in short deduction of tax coupled with voluntary compliance in the term of depositing the same immediately on coming to know the same would constitute reasonable cause. The assessing officer also gave a finding that ignorance of law is no excuse but simultaneously it is also true that there is no presumption that everyone knows the law. What is important is the fact that the moment a person comes to know that

he has committed a mistake and being a person of reasonable intelligence and ordinary prudence if he takes the corrective measures to rectify the same immediately, then it cannot be said that he acted deliberately with complete disregard to law. There is also considerable force in the contention of the assessee that non-recording of satisfaction by assessing officer in the order under section 201(1) with regard to the fact that case is fit for levy of penalty makes the levy of penalty void ab initio. In view of above discussion and in the totality of facts and circumstances of the case we are of the considered opinion that the findings of learned Commissioner of Income Tax (Appeals) in his appellate order are in accordance with law and therefore, we uphold the order of learned Commissioner of Income Tax (Appeals). Thus, all grounds of revenue in all appeals are rejected.

15. From going through the above decision of Hon'ble Tribunal and examining the facts of instant case we find that this decision is squarely applicable on the facts of the instant case wherein also the assessee in addition to the tax deducted u/s 194(1A) @ 1% in addition also deposited deducted and deposited TDS u/s 195 of the Act along with the interest for delay.

16. Even otherwise in our view the provisions of Section 273B of the Act *"the penalty is not to be imposed in certain cases"* is applicable on the assessee as Section 273B of the Act contemplates that no penalty shall be imposable on the persons for any violation

referred to in the said provisions (which in this case is Section 271C of the Act) if he proves that there was a reasonable cause for the said failure. In the case of the assessee(s) also when the transactions took place there was only copy of PAN card issued by Income Tax Department having no address. Seller came to India for registration. Seller has not provided any documentary evidence to show that he is a Non Resident Indian. Having local address in USA cannot be a sufficient evidence to show that the person is a Non Resident Indian. The assessee(s) prudently deducted tax @1% u/s 194 (1A) of the Act. Subsequently when it was brought to their notice that the seller is a Non Resident Indian they as law abiding citizens immediately deposited the correct amount of TDS @20.6% applicable on the said transaction u/s 195 of the Act along with interest in addition to 1% already deposited. *Mens rea* to evade tax is not appearing at any stage of the proceedings on the part of the assessee. It would have made no difference for them to deduct tax @1% or 20.6% since it was to be withheld from the purchase consideration. There cannot be any other mal intention for deduction of TDS at lower or wrong rate.

17. We therefore are of the considered view that in the given facts and circumstances of the case the assessee(s) are duly eligible to get the benefit of the provisions of Section 273B of the Act as they have proved beyond doubt that in a bonafide belief they deposited tax @1% u/s 194IA of the Act considering the seller as Resident Indian and later on before conclusion of the proceedings before the Ld. A.O have deposited correct amount of tax @20.6% and applicable interest. Thus they had a reasonable cause for the said failure and in addition the decision of Hon'ble Mumbai Tribunal in the case of *SMS India Ltd (supra)* also applies squarely on the case of the assessee. We thus set aside the finding of Ld. CIT(A) and direct the revenue authorities to delete the penalty of Rs.5,15,000/- levied u/s 271C of the Act in the case of all the three assessee(s). Thus Ground No.2 raised in all the 3 appeals are allowed.

18. The common Ground No.I referring to the action of Ld. CIT(A) of *ex-parte* dismissing the assessee(s) appeal and the request of restoring back for fresh hearings with Ld. CIT(A) have not been addressed by Ld. Counsel for the assessee which shows that all the three assessee(s) are not interested to press this ground, therefore

this common ground No.I is dismissed as not pressed and ground No. IV is general in nature which needs no adjudication they are also.

19. In the result common grounds raised in Ground No. II & Ground III are allowed in case of all the assessee(s) and Ground No.I is dismissed as not pressed. All the three appeals (ITA No.500 to 502/Ind/2018) are partly allowed.

The order pronounced in the open Court on 14.10.2020.

Sd/-	Sd/-
(KUL BHARAT)	**(MANISH BORAD)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

दिनांक /Dated : 14 October, 2020

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore