

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: H : DELHI

BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.558/DEL/2022
Assessment Year: 2010-11

Ambience Private Limited,
L4, Green Park Extension,
New Delhi – 110 016.

Vs ITO,
Range-73,
New Delhi.

PAN: AAACA0541K

(Appellant)

(Respondent)

Assessee by : Shri Anand Chaudhuri, Advocate
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 08.02.2024
Date of Pronouncement : 29.04.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal preferred by the assessee is against the order dated 25.03.2022 of the Commissioner of Income-tax (Appeal)-27, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.CIT(A), Delhi-27/10074/2009-10 arising out of an appeal before it against the order dated 15.03.2021 passed u/s 271C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the JCIT, Range-73, Delhi (hereinafter referred as the Ld. AO).

2. In the case of the assessee company, on the basis of the information from ACIT, Circle 73(1), a verification was completed u/s 201(1)/201(1A) dated 30.03.2012 and it was observed that during the survey operations carried out at the premises of M/s Ambience Limited, it was found that the assessee is making payments towards directors sitting fees amounting to Rs.6,80,000/- without deduction of TDS thereon. Further, the assessee has paid an amount of Rs.10,89,200/- on account of transaction charges being professional payment without deduction of TDS in violation of section 194J of the Act. Thus, after issuing a show-cause notice u/s 271C of the Act, the penalty order was passed which was challenged before the Id.CIT(A) wherein the Id.CIT(A) has bifurcated the payments to directors as sitting fee penalty to the extent of Rs.68,000/-. However, he sustained the penalty of Rs.1,08,920/- on account of professional charges paid to directors for which the assessee is in appeal raising the following grounds:-

“1. That on the facts and circumstances of the case and in law, the order dated 25.03.2022 passed u/s 271C of the Income Tax Act, 1961 (“Act”) by the Commissioner of Income Tax (Appeals)-27, Delhi (“Id. CIT(A)”) partly confirming/upholding the order dated 15.03.2021 passed by the JCIT, Range-73, Delhi (“AO”) is bad in law.

2. That contrary to the facts on record and in disregard of settled law, the Id.CIT(A) erred in confirming the penalty of Rs.1,08,920/- on account of Professional charges – for not deducting tax at source u/s 194J of the Act.

3. The appellant craves leave to add, alter, amend or vary any of the above grounds during the pendency of the appeal.”

3. Heard and perused the record. The plea of the assessee is similar to that raised before the Id.CIT(A) and we consider it appropriate to reproduce the same conveniently from the order of Id.CIT(A):-

“The Ld. A.O. has imposed a penalty u/s 271C of the Income Tax Act for non deduction of TDS on Directors fee amounting to Rs. 6,80,000/- and transaction charges for Rs.10,89,200/- resulting in a penalty of Rs. 68,000/- and Rs. 1,08,920/- respectively, totaling to Rs. 1,76,920/-. Sir, as regard to the deduction of TDS on sitting fees of the Directors as concerned, the assessee was under the bonafide belief that no TDS is required to be deducted on such payments. The view of the assessee also finds force that the amendment in the Section 194J(1)(ba) which clarifies that needs to be deducted on remuneration or fees to the Director of the company. The said Section was introduced in the Finance Act, 2012 with effect from 01st July 2012, which means that for F.Y. 2009-10, this position was not clear as to whether the assessee was supposed to deduct TDS on Directors sitting fee. This clearly enforces that the assessee was in a belief and hence did not deduct the TDS. However, it will not be out of place to mention that the respective Directors declared the entire sitting fees received from the assessee in their personal returns and tax was paid thereon. Hence, there was no loss of Revenue.

2. With utmost modesty to our credit, it is respectfully stated that the assessee is fully covered by the provisions of section 273B which states that if there is a reasonable cause then no penalty u/s 271C should be imposed. Further, the Ld. A.O. has not appreciated the fact that there is no contumacious conduct on the part of the assessee for non-deduction of tax and hence the penalty cannot be imposed. “SARV ESTATE PVT. LTD. VS. JCIT, ITAT, DELHI.”

5. With regard to the Transaction Charges, the assessee was under the bonafide belief that there is no category of TDS under which this transaction would fall and hence the assessee did not deduct the TDS. It will not be out of place to mention that the payee did pay the entire taxes on all the transaction charges received from the assessee in their respective tax returns. For the sake of brevity, we are not repeating the detailed submission as referred to in preceding paragraphs which clearly establishes that the assessee has a reasonable cause for not deducting the TDS as per the provisions of Section 273B of the Income Tax Act.”

4. After considering the explanation given by the assessee in regard to the 'Transaction charges which the tax authorities have considered as 'Professional charges' paid to directors falling in limb (ba) of sub-section (1) of section 194J of the Act, it comes up that the Id.PCIT has accepted the plea of the assessee that payments made to directors on account of sitting fee is allowable. The assessee seems to have had valid reasons to consider the payments on account of 'transactional charges' to be not covered by Section 194J(1)(ba) of the Act as there is no such head in this section. Thereby not deducting the TDS seems to be out of bonafide belief. Imposition of penalty is thus not justified. Consequently, the grounds raised are sustained. The appeal of the assessee is allowed. The impugned penalty is deleted.

Order pronounced in the open court on 29.04.2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 29th April, 2024.

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Copy forwarded to:

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



Asstt. Registrar, ITAT, New Delhi