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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-09-2007

Judge : N Vasudevan, K Bansal

Appellant : ito

Respondent : Magic Software (P.) Ltd.

Judgement :

1. These are appeals by the revenue against the common order dated 2-2-2006 of the Id. Commissioner (Appeals)-XXX, New Delhi, relating to the financial years 2000-01, 2001-02 and 2002-03.

2. The respondent herein had taken premises 836 - Mohan Co-operative Industrial Estate, Delhi, on lease from M/s. Hewa (P.) Ltd. under a lease agreement dated 19-2-2000. There was another agreement by which the respondent agreed to pay hire for furniture and fixtures in the premises of M/s. Hewa (P.) Ltd. The furniture and fixture referred to in the agreement was a DC Set (180 KVA) and Air-conditioners. The respondent at the time of making the payment under the hire agreement for hire of DC set and Air-condition ers deducted tax at source by treating the payment as one made to a contractor for carrying out any work under Section 194C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and deducted tax at 2 per cent. The assessing officer was of the view that the sum paid under the hire agreement was also in the nature of rent and, therefore, 20 per cent tax ought to have been deducted at source as contemplated under Section 194-1 of the Act. In respect of the default of short deduction of tax at source,

proceedings were initiated and the tax short deducted was determined under the provisions of Section 201(1) of the Act and penalty proceedings were initiated under Section 271C of the Act for the failure of the respondent to deduct appropriate tax at source for all the three financial years.

3. The plea of the respondent in response to the notice under Section 271C of the Act was that he was under the bona fide impression that since the items taken on hire were movable items, they did not form an essential part of land and building. It was also pointed out that even the payee had included the payments received from the respondent in his returns of income and paid taxes thereon. The respondent explained that the expression "together with furniture and fittings" used in Explanation to Section 194-1 of the Act defining the term 'rent' for the purpose of that section gives an impression that the same would not be applicable to equipments and technical infrastructure. The respondent thus prayed that there was a mistaken belief on its part regarding appropriate rate at which tax ought to be deducted at source.

The respondent further submitted that the fact that there are two separate agreements are for lease of the land and building and are for hire of equipments, was again a pointer to the reasonableness of the belief entertained by the respondent. Further attention was drawn to Clause 15 of the agreement for hire wherein it was specifically provided that in respect of the hire charges payable tax would be deducted at source under Section 194C of the Act. The bona fide belief entertained by the respondent was thus pledged as a reasonable cause for the respondent's failure to deduct tax at source at the appropriate rates.

4. The assessing officer imposed penalty holding that there was no reasonable cause for the respondent's failure to deduct tax at the appropriate rates. In this regard he has also referred to the hiring agreement wherein it has been provided that the said agreement would be co-terminus with the lease of the factory premises. On Clause 15 of the agreement for hire wherein it was provided that the tax deductible at source treating the payment of hire as one made to a contractor under a contract within the meaning of Section 194C of the Act is being specified on the advise of the legal advisors, the assessing officer held that such clause in

the agreement would not be binding on the revenue especially in the light of the clear provisions of Section 194-1 of the Act.

5. On appeal by the assessee, the CIT (Appeals) was of the view that there was a reasonable cause for the assessee's failure to deduct tax at the appropriate rate. The CIT (Appeals) also referred to the proposed definition of 'rent' under Section 194-1 of the Act by the Taxation Laws Amendment Bill, 2005 whereby the payment made by the respondent in the present case was also sought to be covered by the amendment. According to the CIT (Appeals) this was also a pointer of the fact that prior to the proposed amendment deduction of tax at source at a lesser rate was permissible. Keeping in mind the totality of facts the CIT (Appeals) deleted the penalty imposed by the assessing officer holding that reasonable cause existed for the respondent's failure. The penalty imposed was cancelled. Hence, the present appeal by the revenue.

6. The learned departmental Representative relied on the order of the assessing officer and submitted that no reasonable cause existed within the meaning of Section 273B of the Act, 7. We have considered his submissions. We are of the view that in the facts and circumstances of the present case the plea of existence of reasonable cause was rightly accepted by the CIT (Appeals). Admittedly, the items in respect of which hire charges were paid by the respondent were DC Set and Air-conditioners. Explanation to Section 194-1 of the Act provides that for the purpose of that section, the expression 'Rent' means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and land appurtenant thereto, whether or not such building is owned by the payee. As to whether the above items given on hire will form part of the expression 'furniture and fixtures' referred to in Explanation to Section 194-1 of the Act explaining the term 'Rent' is a matter of debate. By the Taxation Laws Amendment Bill, 2005, the definition of 'Rent' for the purpose of Section 194-1 was proposed to be amended to include rent paid for use of plant or machinery. The Amendment was, however, not carried out in the Act. The above circumstances also support the plea of the assessee regarding bona fide belief that provisions of Section 194-1 of the Act are not attracted to payment of hire

charges. Under Clause 15 of the agreement for hire it has been specifically mentioned that the applicable provisions for tax deduction at source would be Section 194C and that the same is agreed on the basis of the legal advice. The respondent had been deducting tax at source on the hire charges paid under the hire agreement at the agreed rates. All these cumulative facts go to show that there was a bona fide belief entertained by the respondent. Such bona fide beliefs constitute reasonable cause. In the facts and circumstances of the present case, we are of the view that the penalty imposed was rightly cancelled by the CIT (Appeals). We find no grounds to interfere with the order of the CIT (Appeals). All these appeals by the revenue, are dismissed.

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