IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH 'A', CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI T.R.SOOD, ACCOUNTANT MEMBER

ITA No. 116/Chd/2014
Assessment Year : 2009-10

Sukhdev Singh, # 230, Industrial Area, Phase I, Chandigarh. PAN: ABZPS6319J (Appellant)	Vs.	The J.C.I.T.(TDS), Chandigarh. (Respondent)

Appellant by : Shri Tej Mohan Singh
Respondent by : Shri J.S.Nagar, DR

Date of hearing : 24.09.2014
Date of Pronouncement : 29.09.2014

O R D E R

Per BHAVNESH SAINI, J.M. :

This appeal filed by the assessee is directed against the order of the learned CIT (Appeals), Chandigarh dated 19.12.2013 for assessment year 2008-09 confirming the penalty under section 271C of the Income Tax Act.

2. In this case it was informed that the assessee has not deducted the tax at source as required under the provisions of Chapter XVII-B of the Income Tax Act. The Assessing Officer levied penalty under section 271C of the Income Tax Act for a sum of Rs.40,254/- vide separate order. The assessee submitted before the learned CIT (Appeals) that he was under bonafide belief that TDS was not to be deducted on payment

made to non-banking financial institution. The assessee relied upon the decision of Hon'ble Supreme Court in the case of M/s Eli Lilly & Co. (India)(P) Ltd., 312 ITR 225 (SC). The learned CIT (Appeals), however, found that whatever contention was raised has not been substantiated through evidence. The learned CIT (Appeals) found that since the assessee has failed to prove that it was under bonafide belief, therefore, the appeal of the assessee was dismissed.

3. We have heard the learned representatives of both the parties and perused the findings of the authorities below. The learned counsel for the assessee submitted that omission to deduct TDS was under bonafide belief that TDS was not to be deducted on payment made to non-banking financial institution as in the case of the banks. The assessee has already been penalized by way of addition at the time of assessment by way of disallowance of interest under section 40(a)(ia) of the Act. He has submitted that whatever addition was made has been admitted by the assessee and taxes have been paid and the assessee on realizing this mistake has started to deduct TDS in future. The copy of the assessment order for the year under consideration and demand created by the Assessing Officer are placed on record. The copy of the challan is also filed on record to prove that the assessee ultimately accepted the demand created as per assessment order, which is also supported by the affidavit of the assessee. Considering the submissions of the parties and in the light of theses materials on record, it is clear that the assessee may be under the bonafide belief that TDS is not liable to be

deducted on payments made to non-banking financial institution. It is well settled law that the penalty need not to be imposed in each and every case and discretionary in nature and the facts and circumstances of the case shall have to be taken into consideration. Section 273B of the Income Tax Act provides that no penalty under section 271C shall be imposable on the person or the assessee as the case may be, for any failure referred to in the said provisions, if he proves that there was reasonable cause for the said failure. The circumstances explained by the learned counsel for the assessee clearly reveal that the assessee paid interest to non-banking financial institution and did not deduct tax because the assessee was under the bonafide belief that no TDS was to be deducted on the payments made to non-banking financial institution. The Assessing Officer made disallowance under section 40(a)(ia) of the Income Tax Act and other additions were also made in the assessment order, which are accepted by the assessee and the demand raised as per assessment order has been paid. Therefore, these circumstances would clearly reveal that the assessee has reasonable cause for failure to comply with the provisions of section. Therefore, in view it being a beginning of the assessee for failure to deduct tax and then the assessee in future has starting deducting TDS would suggest that the penalty may not be imposed in the aforesaid case. Considering the above discussion, we are of the view that the levy of penalty in the facts and circumstances of the case is not warranted. We

accordingly set aside the orders of the authorities below and cancel the penalty.

4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on this 29th day of September, 2014.

Sd/-	Sd/-
(T.R.SOOD)	**(BHAVNESH SAINI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 29th September, 2014

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh