



ITA Nos.4206 & 4207/M/2016
Gulam Mustafa Khan
Assessment Years 2009-10 & 2010-11

आयकर अपीलिय अधिकरण “जी” न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 4206/Mum/2016
&
आयकर अपील सं./I.T.A. No. 4207/Mum/2016

(निर्धारण वर्ष / Assessment Years: 2009-10 & 2010-11)

Gulam Mustafa Khan A/2 Simla Park C.H.S.L. Mumbai Pune Road Kausa Mumbra Thane – 400 612	बनाम/ Vs.	Additional Commissioner of Income Tax TDS Range Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACP K-8068-J		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Devendra H. Jain. Ld. AR
प्रत्यर्थी की ओर से/Respondent by	:	Dr. Anupama Singla, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	11/04/2017
घोषणा की तारीख /	:	12 /04/2017



Date of Pronouncement		
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आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. These are two appeals by Assessee for Assessment Years [AY] 2009-10 & 2010-11 which assails separate order of Ld. Commissioner of Income Tax (Appeals)-1 [CIT(A)], Mumbai both dated 04/03/2016 *qua* confirmation of penalty u/s 272A(2)(k) for Rs.67,500/- and Rs.58,200/- respectively. Since, both appeals springs out of common set of facts, we dispose-off both the appeals by this common order for the sake of convenience and brevity. First, we take up ITA No.4206/M/2016 where the assessee is aggrieved by imposition of penalty of Rs.67,500/- for late filing of quarterly TDS returns.
2. Briefly stated, the assessee, being deductor having TAN PNEG07330B was found to have filed quarterly TDS returns for Quarter 1, 2 & 3 for the impugned AY with delay ranging from 232 days to 416 days which resulted into imposition of penalty of Rs.97,200/- u/s 272A(2)(k) vide Assessing Officer [AO] order dated 21/06/2013. The same was assailed before Ld. First Appellate Authority with partial success vide order dated 04/03/2016. The assessee pleaded for deletion of penalty on the ground that the assessee was individual carrying on the business of transport in the unorganized sector and was not fully conversant with the complex TDS provisions, which resulted into delay in filing of TDS returns. Further, there was delay in TDS payment by the assessee and therefore, the assessee could not file the TDS returns before deposit of TDS with the revenue. The Ld. CIT(A) partially accepting the contentions of the assessee reduced the penalty to Rs.67,500/- after appreciating the date of actual payment of TDS by the assessee and date of filing of quarterly TDS returns. Still aggrieved, the assessee is in appeal before us.



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3. The Ld. Counsel for Assessee [AR] raising similar contentions pleaded that the assessee was an individual transport operator working in the unorganized sector and was not fully conversant with the complex TDS provisions and compliances thereof. He was fully dependent upon the tax consultant to comply with these TDS provisions and deducted / deposited TDS as per the instructions of the consultants from time to time and therefore there was no deliberate default on the part of the assessee so as to attract the penalty. Further, it took some time for the assessee to convince the petty transporters about TDS provisions. Moreover, the assessee deposited the due TDS along-with applicable interest, which do not justify the penalty. Reliance was placed on the order of Rajkot Tribunal (SMC) in *Bharat Kumar Manilal Vs. JCIT [121 Taxman 361 order dated 1/11/2001]*. Per *contra*, Ld. DR, *Dr. Anupama Singla*, drew our attention to the express penal provisions as contained in Section 272A to contend that the late filing of TDS returns would certainly entail imposition of penalty at prescribed rates. Further, the assessee incurred the same default over several years, which do not justify deletion of penalty.

4. We have heard the rival contentions and perused the relevant material on record which *prima facie* reveals that the assessee has deposited the TDS with interest as applicable from time to time. We find some strength in the arguments of the Ld. AR that assessee was an individual working in the unorganized sector and therefore, not fully conversant with the complex TDS provisions and had to depend upon some experts to comply with these provisions as TDS provisions certainly require certain higher degree of understanding of TDS provisions and manner of compliances thereof. We also note the fact that the TDS compliances have undergone frequent changes over the last decade in terms of deduction, deposit, e-filing of TDS returns and generation of TDS certificates etc. Therefore, without delving much deeper into the issue on merit, we are inclined to delete the said penalty on the facts and circumstances of the case and accordingly, allow assessee's appeal.



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5. Now we take up ITA No.4207/M/2016 for AY 2010-11 where the assessee is saddled with a penalty of Rs. 58,200/- in similar manner for late filing of quarterly TDS return for all quarters of impugned AY and the same has been assailed before us. There being no change in the facts and circumstances except for dates / figures and minor variations, taking the same stand, we delete the impugned penalty and allow assessee's appeal.

6. In nutshell, both appeals filed by the assessee stands allowed.

Order pronounced in the open court on 12th April, 2017.

Sd/-

(D.T. Garasia)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12.04.2017

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai