

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, G, मुंबई ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "G", MUMBAI**

**श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष**

**Before Shri Amit Shukla, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA No.6816/Mum/2014
Assessment Year: 2010-11**

| | | |
|--|----------------------|----------------------------|
| Govind Pritamdas Vanjani, 1214/1215 Raheja Classic 28 Link Rd. Oshiwara Andheri(W) Mumbai-400053 | बनाम/ Vs. | ACIT (TDS) RG 1 Mumbai- |
| (Assessee) | | (Revenue) |
| P.A. No.AALPV4342H | | |

| | |
|---------------|---|
| Appellant by | Shri S.S. Phadkar & Shri Vishwanath Verma (AR) |
| Respondent by | Shri A. Ramachandran (DR) |

| | |
|--|-------------------|
| सुनवाई की तारीख/ Date of Hearing: | 06/06/2016 |
| आदेश की तारीख / Date of Order: | 24/06/2016 |

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals), Mumbai-1 {(in short 'CIT(A)}}, dated 12/09/2014 passed against penalty

order u/s 272A(2)(k) of the Act, for the Assessment Year 2010-11 on the following grounds:

“Being aggrieved by the order of the CIT (Appeals) range 1 ,Mumbai, hereafter referred to as the CIT(A) , is filing this Appeal. Your appellant submits the following grounds of appeal for your sympathetic consideration:

- 1. The Hon'ble CIT(A) erred in confirming penalty u/s 272A(2)(k) of the Income Tax Act, 1961 amounting to Rs. 71346/-*

Your appellant humbly prays that the said penalty of Rs.71346/- be deleted.

- 2. The Hon'ble CIT(A) erred in coming to the conclusion that your appellant had no "reasonable cause" to delay the filing of ETDS Returns, whereas the assessee did not have accounting staff possessing required expert knowledge about process of filing the ETDS returns, and Assessee got knowledge about his liability of deducting TDS at the end of the financial year ended 31 .03.2010 when his sales turnover crossed Rs.40 Lacs which was the limit for getting the books audited u/s.44Ab of the Act.*
- 3. It is also mentioned that the financial year 2009-10 (A.Y.201 0-11) was the first year of Tax Audit for the appellant, so as per provisions of IT Act, 1961 Appellant was actually not liable to deduct and pay the Tax at Source*
- 4. The Hon'ble erred in coming to the conclusion that the delay in not acceptable in the modern days of Computer, while actually filing TDS returns by Paper Returns was easier and simpler than filing the TDS returns through computers, which requires a Separate Computer Software and an expert person to operate it.*
- 5. Hon'ble CIT(A)-14 fixed the date of hearing of the Appeal for 11.09.2014, however as the consultant of the appellant was out of station, there was a adjournment request submitted to the office of the CIT(A)-14 on 11-09-2014, however Hon'ble CIT(A)-14 could not consider the first and only request for adjournment and decided the appeal. We therefore plead that Appellant was not given*

due right of being heard.

6. *On these facts and under the circumstances there was a "reasonable cause" due to which the Assessee could not file the EMS returns on the due dates."*

2. During the course of hearing, arguments were made by Shri S.S. Phadkar & Shri Vishwanath Verma, (ARs) on behalf of the Assessee and by Shri A. Ramachandran, Departmental Representative (Ld. DR) on behalf of the Revenue.

3. The solitary issue raised in this appeal is with regard to levy of penalty of Rs.71,346/- due to delay in filing of ETDS Returns.

3.1. During the course of hearing, it was submitted by the Ld. Counsel that entire amount of TDS was deducted and deposited in the Government Treasury within time as per law. But, due to lack of infrastructure and proper staff, the returns could not be filed timely. The assessee had a part time accountant who was not well versed to the system of e-filing of returns which was introduced recently. Thus, there were reasons beyond the control of the assessee and thus, there was reasonable cause due to which delay occurred in filing of these documents electronically.

3.2. Per contra Ld. DR submitted that although the amount involved is not substantial but due to delay in filing of electronic TDS returns it becomes difficult for payees to get credit of the TDS amount as the same are linked to Form

No.26AS and therefore, penalty should be levied on the assessee under such circumstances.

3.3. We have gone through the orders of the lower authorities and considered the submissions of both the parties. It is noted by us that as per facts brought before us, the assessee had deducted the tax as per law and deposited the same also within time. Thus, in effect there is no leakage of revenue. It is contended that the system of electronically filing of TDS was introduced recently and many persons were not yet well versed with the technicalities and procedures involved in filing of TDS returns electronically. It is also stated that the assessee had a small set up and did not have a permanent accountant and the part-time accountant who was working for the company could not appreciate the implications of late filing of Electronic TDS returns. It was further submitted by the assessee that it took time to avail services of a technical expert to do this job. It is further brought to our notice that impugned assessment year was first year of Tax Audit of books of accounts of the assessee. We find force in the contentions made by Ld. Counsel. The explanations of the assessee are plausible and these cannot be dismissed as wholly unfounded. In our view, the assessee has been able to set up a "**reasonable cause**", as envisaged u/s 273B, for his failure in filing the returns in time. Thus, taking into account all the facts and circumstances of the case and overall conduct of the assessee, we find that in this case penalty should not be levied and

therefore, we direct the AO to delete the penalty of Rs. 71,346/-.

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

Order pronounced in the open court on 24th June, 2016.

Sd/-
(Amit Shukla)

Sd/-
(Ashwani Taneja)

न्यायिक सदस्य / JUDICIAL MEMBER लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24/06/2016

Patel, P.S. नि.स.

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai