

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.515 & 516 /Mds/2015**
(निर्धारण वर्ष / Assessment Years : 2008-2009 & 2010-2011)

The Executive Engineer (O & M)
TANGEDCO,
Egmore/CEDC/Central
No.47, Malayappan Road,
Otteri,
Chennai 600 012.

The Joint Commissioner of
Income Tax,
TDS Range-I,
Chennai.

[PAN: AADCT 4784E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. S. Sridhar, Advocate
प्रत्यर्थी की ओर से / Respondent by : Dr. Nischal, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 13.04.2015
घोषणा की तारीख /Date of Pronouncement : 13.04.2015

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

These two appeals by assessee are directed against the common order of Commissioner of Income Tax (Appeals)-VII, Chennai, Dated 24.07.2014 for the assessment years 2008-09 and 2010-11.

2. The only grievance of the assessee in these appeals is with regard to levy of penalty u/s. 272A (2)(k) of the Income Tax Act. There was delay of 153 days in filing of appeals before the Tribunal. The assessee filed petitions for condonation of delay in filing of appeals before the Tribunal, stating that it was due to administrative reasons as well as the frequent changes in the office of the assessee, the decision to file the appeals was taken belatedly in as much as the frequent changes in the office were not anticipated and the said reason would constitute reasonable cause for condonation of delay in filing the appeals under consideration. The assessee's counsel placed reliance on the judgment of Supreme Court in the case of *Collector, Land Acquisition vs. Katiji (1987)* 167 ITR 471 wherein it is held that:

“The Legislature has conferred power to condone delay by enacting section 5 of the Limitation Act, 1963, in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression sufficient cause in section 5 is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life-purpose of the existence of the institution of courts.

A justifiably liberal approach has to be adopted on principle. Everyday delay must be explained does not imply a pedantic approach. The doctrine must be applied in a rational, common sense and pragmatic manner. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in injustice being done because of non-deliberate delay.”

3. The Id. Departmental Representative has not raised any serious objection to condone the delay.

4. We have heard both the parties. There were 153 days delay in filing of these two appeals before the Tribunal. The assessee stated it was due to administrative reasons as well as the frequent changes in the office of the assessee and delay was not wilful or deliberate which was beyond the control of the assessee. In our opinion, there exists good and sufficient reason to condone the delay and the reasons advanced by the assessee are said to be reasonable and the delay in filing these two appeals are condoned and the appeals are admitted for adjudication.

5. Coming to the facts of the case for the assessment year 2010-2011 that the assessee is required to file e-TDS returns as per the provisions of sec.200(3) of the Act. The relevant details for the A.Y. 2010-11 are as under:-

Period	Due date for filing the return	Date of reckoning	Delay in No. of days	Penalty leviable @100/day (₹)
First Quarter	15.07.2010	30.03.2012	989	98,900
Second Quarter	15.10.2010	30.03.2012	897	89,700
Third Quarter	15.01.2011	30.03.2012	805	80,500
Fourth Quarter	15.05.2011	30.03.2012	685	68,500
			Total	3,37,600/-

It was found that the TDS return were not filed in time for all

the quarters of the FY 2009-10. Therefore penalty notice u/s.272A(2) (k) of the Act was issued on 02.09.2011, 02.12.2011, 24.02.2012 and 12.03.2012. In spite of it, the assessee did not respond. Therefore, the JCIT was of the view that the assessee did not willfully comply to the notice issued u/s.272A (2)(k) of the Act. Since assessee violated the statutory provisions of section 200(3) of the Act by not filing the TDS returns in time for all the four quarters of F.Y. 2010-11, the JCIT, TDS Range-I, Chennai levied a penalty of ₹3,37,600/- for the F.Y. 2009-10.

5.1 The relevant particulars relating to the assessment year 2008-2009 is as under:-

Period	Due date for filing the return	Date of reckoning	Delay in No. of days	Penalty leviable ₹100/- day (₹)
First Quarter	15.07.2007	30.03.2012	1720	1,72,000
Second Quarter	15.10.2007	30.03.2012	1628	1,62,800
Third Quarter	15.01.2008	30.03.2012	1536	1,53,600
Fourth Quarter	15.05.2008	30.03.2012	1415	1,41,500
			Total	6,29,900

It was found that the TDS returns were not filed in time for all the quarters of the A.Y. 2008-09. Therefore penalty notice u/s.272A(2) (k) of the Act was issued to the assessee. As there was no response, reminder letters were issued dated 02.09.2011, 02.12.2011,

24.02.2012 and 12.03.2012. The assessee did not respond and hence the JCIT was of the view that the assessee has willfully not complied with the notice issued. Since the assessee violated the statutory provisions of sec. 200(3) of the Act by not filing the TDS returns in time for the all the quarters of F.Y 2007-08, the JCIT levied a penalty of ₹6,29,900/- u/s.272A (2) (k) of the Act. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the Commissioner of Income Tax (Appeals).

6. The Commissioner of Income Tax (Appeals) observed that it is a fact that the quarterly returns for A.Ys 2008-09 and 2010-11 were not filed in time. Even now the returns relating to the above period are not filed. Even at time of hearing before the undersigned the Authorised Representative filed a letter explaining staff shortage of their organization. Deducting tax at source and paying into government a/c and filing of quarterly returns are mandated by Income-tax Act and deduction and payment of tax in time do not absolve the assessee from filing returns in time. Filing of returns as per sec.200(3) of the Act is a statutory function of the deductor and failure to do so necessarily invites levy of penalty u/s.272A(2)(k) of the Act. Hence, it is a fit case for levy of penalty u/s.272A(2) (k) of

the Act for both the assessment years viz 2008-09 and 2010-11. The assessee was not able to prove the reasonable cause for failure to file the returns in time for both the assessment years. Sufficient opportunities were offered to the assessee for explaining the reasons for not filing the returns in time which the assessee failed to do so. Hence the orders levying penalty u/s.272A(2) (k) of the Act by the JCIT, TDS Range, Chennai were confirmed by Commissioner of Income Tax (Appeals). Against this, the assessee is in appeal before us for both assessment years.

7. We have heard both the parties and perused the material on record. In the present case the assessee had deducted TDS from the payment and paid it to the Government treasury. The assessee was required to file return as per section 200(3) of the Act which the assessee failed to do. This had attracted levy of penalty u/s.272A(2)(k) of the Act. The assessee has explained the reason for failure to file return of TDS as required, that the work was handled by few staff who were changed on transfer. There is no finding by the lower authorities that the reason advanced by the assessee is not genuine. Further, from the default of the assessee, no loss was caused to the Department as the deduction of tax had already paid to the Government treasury and there is no grievance in

any manner to the Revenue. The payee has also not raised any grievance before the Revenue authorities. Therefore, the default, if any, is technical and venial in nature, not justifying the levy of penalty in this case. The explanation offered by the assessee is bonafide and the default is only technical in nature. We are inclined to delete the penalty for the above assessment years.

8. In the result, both the appeals filed by the assessee in ITA Nos.515 & 516/Mds/2015 are allowed.

Order pronounced on Monday, the 13th day of April, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद)

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

चेन्नई/Chennai.

दिनांक/Dated:13.04.2015.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2. प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

