

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'J', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI

Before Shri Shamim Yahya, AM & Shri Ravish Sood, JM

ITA No.4047/Mum/2015 : Asst.Year 2012-2013

Marol Nand Dham Udyog Premises Co-op. Society Limited A/16, Agnishaman Dal Marg Marol, Andheri (East) Mumbai – 400 059. PAN : AAAAM8668B.	बनाम/ Vs.	Addl.Commissioner of Income-tax Circle Range 2 Mumbai.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : --- None ---

प्रत्यर्थी की ओर से /Respondent by : Ms.Arju Garodia

सुनवाई की तारीख / Date of Hearing : 19.06.2017	घोषणा की तारीख / Date of Pronouncement : 23.06.2017
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आदेश / ORDER

Per Shamim Yahya, AM

This appeal by the Assessee is directed against order of learned CIT(A) dated 21.04.2015 and pertains to assessment year 2012-2013.

2. The grounds of appeal read as under:-

“On the facts and circumstances of the case, the learned CIT(A) erred in confirming the penalty u/s 272(2)(k) r.w.s. 274 r.w.s. 200(3) of the Income Tax Act amounting to Rs.57,965/- without considering the fact and circumstances of the case.”

3. Brief facts of the case leading to the levy of penalty are as under:-

3.1 The facts of the case are that the Assessing Officer, on examination of records, noted that the assessee did not filed the TDS returns after the due

dates which were required to be filed at the end of every quarter. Under the provisions of section 200(3) read with Rule 31 A, a quarterly statement of TDS in Form No. 24Q. and 26Q, is required to be filed by the assessee by 15th July, 15th October, 15th. January and 15th June (for last quarter) of the year.

3.2 The delays in submission of TDS returns for the quarters of FY 2011-12 were compiled by the Assessing Officer as under:-

Period	No.of days	Penalty amount restricted to (Rs.)
26Q1	332	33,200
26Q2	240	7,165
26Q3	148	14,800
26Q4	28	2,800
Total		57,965

3.3 The Assessing Officer, therefore, issued show-cause notice to the assessee asking it to explain as to why penalty under section 272A(2)(k) should not be levied. In response to the above notice, the assessee stated that delay in filing of TDS return was due to non-availability of client's Chartered Accountant.

3.4 The A.O. held that the reasons given by the assessee does not amount to a reasonable cause for not fulfilling the obligation under the Act. Since there existed a statutory obligation to file quarterly returns and the assessee failed to comply with the provisions of the Act he therefore, imposed penalty @ Rs.100/- per day of delay amounting to Rs.57,965/-.

4. Upon assessee's appeal, the learned CIT(A) has confirmed the addition and concluded as under:-

“4.4 Section 200(3) places a statutory mandate on every person to file TDS return/statement in prescribed form and in the prescribed manner by the due date, On breach of provision of section 200(3) penalty is leviable u/s.272(a)(2k) of the I.T. Act. It is also stated that TDS statements are indispensable for the department because it linked to Form No 26 as for giving credit to deductees / tax payers. It is also accessible by deductees /tax payers on the interest. Therefore, timely filing of TDS statements by the deductor is absolutely necessary.

4.5 In case of the M/S Asha Pura garments Ltd. 322 ITR 83, the Hon'ble Bombay High Court has deleted the penalty u/s.272(a)(2)(c) on the ground that there was no delay in issuing of statement/certificate to the deductee u/s 206 immediately after the tax was deposited. Therefore, the Hon'ble Court has upheld the legislative intention that there should be no delay in issue of certificate after the deposit of tax deducted to the Government Treasury. Following the same analogy and the principle of ratio of decision of jurisdiction High Court it is amply clear that the TDS return should be filed immediately after the tax was deposited. In the instant case this has not been done. There is considerable delay in filing of return after the deposit of tax, in all the quarters.

4.6 The Hon'ble ITAT (Mum) in the case of M/s Porwal Creation has upheld the penalty u/s.272A(2)(k) for delay in filing of TDS statement/Return from the date of deposit of taxes.

4.7 The argument of appellant that non-availability of chartered accountant led to delay in filing of Return cannot come to its rescue, The assessee has deducted the tax so it was his duty to pay the tax on time. The appellant has to be vigilant and manage his affairs in such manner that statutory

compliances are met on time. In my considered opinion, since no reasonable cause has been demonstrated by the appellant for delay in filing of TDS statement>Returns, the action of the A.O. in levying penalty of Rs.57,965/- is upheld.”

5. Against the above order, the assessee is in appeal before us.
6. We have heard the learned Departmental Representative and perused the records. None appeared on behalf of the assessee. We find that there was a delay from assessee in filing the quarterly TDS return in this case. The reasonable cause for the delay has been attributed to the proposition that the same was due to non-availability of Chartered Accountant. Here it is to be noted that the assessee is a small cooperative society. This submission of the assessee has not been accepted by the authorities below.
7. We find that the assessee being a small cooperative society, the submission that there was non-availability of a professional cannot be brushed aside. Similarly, the learned CIT(A) has herself preferred to Hon'ble Bombay High Court decision in the case of M/s. Asha Pura Garments Limited (supra) for the proposition that when there is no delay in issuing of statement / certificate to the deductee u/s 206 of the Act, penalty u/s 272(a)(2)(c) cannot be levied. In these circumstances, we note that no case has been made out by the Assessing Officer that assessee has not issued the TDS certificate under consideration in proper time. In these circumstances, in our considered opinion, the assessee's conduct in this case cannot be said to be contumacious so as to warrant levy of penalty. Accordingly, we set aside the orders of the authorities below and delete the levy of penalty.

8. In the result, this appeal filed by the assessee stands allowed.

Order pronounced on this 23rd day of June, 2017.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 23rd June, 2017.

Devdas*

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