

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1051/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Vaichal Constructions Pvt. Ltd.,  
Office No. 1, 8, Ideal Colony,  
Ideal Chambers, Paud Road,  
Kothrud, Pune – 411029

PAN : AABCV4203C

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Additional Commissioner of Income Tax,  
TDS Range, Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E  
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 26-02-2018  
घोषणा की तारीख / Date of Pronouncement : 28-02-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal has been filed by the assessee assailing the order of Commissioner of Income Tax (Appeals)-10, Pune dated 15-03-2016 confirming levy of penalty u/s. 272A(2)(k)/274 r.w.s. 200(3) of the Income

Tax Act, 1961 (hereinafter referred to as “the Act”) for the assessment year 2011-12.

2. The penalty u/s. 272A(2)(k) has been levied for delay of 380 days in filing of quarterly return of TDS. The Assessing Officer issued show cause notice to the assessee on 06-11-2012. Despite service of notice, neither the assessee nor authorized representative of assessee appeared before the Assessing Officer. Accordingly, the Assessing Officer in ex-parte order levied penalty of Rs.38,000/- @ Rs.100/- per day for delay of 380 days in filing of e-TDS return for first quarter of Financial Year 2010-11.

Aggrieved by the order dated 17-12-2012 levying penalty u/s. 272A(2)(k)/274 r.w.s. 200(3) of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The reason given by assessee for delay in filing the quarterly return is that the assessee is not conversant with the e-filing of various forms newly introduced by the Department. The Commissioner of Income Tax (Appeals) rejected the reason given by assessee on the ground that under the provisions of section 273B penalty levied u/s. 272A(2)(k) cannot be waived even on furnishing of sufficient cause. Against the findings of Commissioner of Income Tax (Appeals) the assessee is in second appeal before the Tribunal.

3. The notice of appeal for appearance before the Tribunal on 26-02-2018 was sent to the assessee through RPAD on the address mentioned in Form No. 36. The notice was duly served as is evident from the acknowledgment available on file. Despite service of notice none has appeared on behalf of the assessee nor there is any request seeking

adjournment on behalf of the assessee. Therefore, we are proceeding to decide the appeal with the assistance from ld. DR and the material available on file.

4. Shri Mukesh Jha representing the Department submitted that the assessee has defaulted in furnishing of e-TDS return for the first quarter of Financial Year 2010-11. The due date for filing of return was 15-07-2010, whereas, the return was filed on 30-07-2011. The return was filed with the delay of more than one year and no valid reason has been given by the assessee for delay in furnishing of return. The ld. DR further pointed that the explanation furnished by the assessee cannot be accepted under the provisions of section 273B as the said section does not mention section 272A(2)(k) for which the reasons furnished by assessee may be accepted to delete the penalty.

5. We have heard the submissions made by the ld. DR and have perused the orders of authorities below. The penalty has been levied u/s. 272A(2)(k) for delay in furnishing e-TDS for first quarter in Financial Year 2010-11. It is an undisputed fact that the assessee has deposited tax deducted at source in the Govt. exchequer. The delay was only on account of furnishing of e-TDS return. Undisputedly, there is no loss of revenue to the Department. The issue whether penalty u/s. 272A(2)(k) of the Act is sustainable in the light of the explanation furnished by assessee. Whether in circumstances where the assessee is not conversant with filing of e-returns which were newly introduced and whether the provisions of section 273B would provide shelter to the assessee where penalty u/s. 272A(2)(k) has been levied have been considered by the Co-ordinate Bench of Tribunal

in bunch of appeals, lead case being Nav Maharashtra Vidyalaya Vs. Addl. Commissioner of Income Tax (TDS) Range, Pune in ITA No. 832/PN/2016 for assessment year 2011-12 decided on 07-10-2016. The relevant extract of the findings of Tribunal deleting penalty levied u/s. 272A(2)(k) of the Act are as under :

*“21. In view of various provisions of the Act, as pointed out above, the substitution was made by Income Tax (Sixth) Amendment Rules, 2010 and was applicable for the financial year 2010-11. Since e-compliance of TDS returns was introduced in the said financial year, there was time and again amendments/corrections in order to make system of filing TDS returns userfriendly. The learned Authorized Representative for the assessee has pointed out that there were about 18 amendments / corrections in this regard. In the present set of appeals before us admittedly, there was default in furnishing eTDS statements late for the respective quarters by different assessee, but all relating to assessment year 2011-12. The question which arises for adjudication before us is whether in such cases where e-TDS was made compulsory for the instant assessment year and where the software was not user-friendly and required amendments at the end of the Government itself from time to time and the compliance being a complex procedure introduced for the first time and where originally the deductors were not default in depositing the paper TDS returns, does the assessee deductor have reasonable cause for not furnishing the said e-TDS returns in time. In this regard, reference is to be made to the provisions of section 273B of the Act, where it has been provided that in case a person establishes or proves that he had reasonable cause for the failure to comply with the provisions of various sections provided in section 273B of the Act, then no penalty shall be imposable on such person for the said failure. Reading of section 273B of the Act shows that under it, the Section refers to along with many other sections clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A of the Act. What is relevant for adjudication before us is section 272A(2) of the Act, since penalty has been levied for default in furnishing e-TDS returns under section 272A(2)(k) of the Act. Since section 273B of the Act covers the cases of levy of penalty under section 272A(2) of the Act, then in line with the provisions of said section in case a person establishes its case of reasonable cause for not complying with the provisions of said section, then the section provides that such a person shall not be liable to the penalty imposable for the said failure i.e. under section 272A(2) of the Act. The CIT(A) in the case of several assessee before us has wrongly come to the conclusion that the provisions of section 273B of the Act do not cover the defaults under section 272A(2)(k) of the Act. We reverse the finding of CIT(A) in this regard.*

*22. Now, coming to the case of reasonableness put up before us by different assessee. The first plea raised by all the assessee is that where the compliance to the provisions of the Act was complicated and difficult and in the absence of any technical support in this regard, default if any, in*

*furnishing the TDS returns late should be condoned. Another plea raised by some of the assessee was that where the tax deducted at source was not paid in time, e-TDS returns as such could not be filed and hence, the assessee was prevented by reasonable cause in not filing e-TDS returns in time and as such, no merit in levy of penalty. Another plea raised before us is that charging of fees for each day of default and then, restricting the same to the tax deducted at source was not correct. One another aspect of reasonableness was that in case the returns for quarter 1 was filed belatedly, then the returns for consequent quarters also got delayed for no default and as such, no penalty was leviable for such quarters. Different learned Authorized Representatives appearing before us has made reference to the decisions of various Benches of Tribunal. On the other hand, the learned Departmental Representative for the Revenue has placed reliance on the ratio laid down by the Hon'ble Allahabad High Court in Raja Harpal Singh Inter College Vs. Prl. CIT (supra) and Chandigarh Bench of Tribunal in Central Scientific Instruments Organization Vs. JCIT (TDS) (supra). One last aspect pointed out by the learned Authorized Representative for the assessee was that the CIT(A) has acknowledged that there was reasonable cause in not furnishing e-TDS returns in time. However, no benefit of the same was given to the assessee because the CIT(A) was of the view that the provisions of section 273B of the Act do not cover penalty leviable under section 272A(2)(k) of the Act.*

*23. First of all, we shall deal with the last submissions of the assessee that under the provisions of section 273B of the Act, the provisions of section 272A(2)(k) of the Act are referred and in case the person establishes its case of reasonable cause, then no penalty is to be leviable for such defaults. The case put up by the assessee was that where tax was deducted at source and merely because e-TDS statements / returns were not filed in time does not result in any loss of revenue and hence, no merit in levy of penalty under section 272A(2)(k) of the Act. The claim of deduction of tax deducted at source, its payment to the Treasury to the Government and thereafter, the credit to be allowed to the deductee of tax deducted from his account, all work on the principle that the tax is collected and deposited in the account of the Government as income is earned. In other words, the said provisions of tax deducted are advance payments of tax as you earn the income. Taxes are deducted by the deductor out of payments due to the deductee and such tax deducted is the income of deductee. The credit for tax deduction at source would be allowed to the deductee only after the tax deducted at source is deposited in the credit of the Government and the deductor files the compliance report in this regard by way of e-TDS returns. Thus, it is obligatory upon the person deducting tax to deposit the tax deducted at source and also to furnish statement declaring tax deduction made from the account of various deductees. Earlier provisions were to be complied with manually by filing the TDS returns in paper form. However, as per IT (Sixth) Amendment Rules, 2010 with retrospective effect from 01.04.2010, the deductor was asked to file e-TDS statements for which infrastructure was provided and it was required that the assessee complies to the said filing of e-TDS returns. However, since assessment year 2011-12 was the first year of introduction of such facilities of e-TDS returns, there were certain*

*hindrances which were taken care of by the authorities by way of various amendments introduced in this behalf. The case of the assessee on the other hand, is that they were small tax payers and in the absence of technical guidance provided and because of technical hitches, the TDS returns could not be filed in time. Most of the assessee before us have paid the tax deducted at source to the Treasury within time frame but have defaulted in filing e-TDS statements. In some of the cases, there is default in payment of tax deducted at source and consequently, delay in filing the e-TDS returns. The question which arises is whether in the above said scenario, can the provisions of section 273B of the Act be applied in order to decide the issue of levy of penalty under section 272A(2)(k) of the Act.*

*24. The Hon'ble Punjab & Haryana High Court in HMT Ltd., Tractor Division Vs. CIT (2005) 274 ITR 540 (P&H) had held that where the tax deducted at source had been paid in time and the necessary returns in respect thereto were filed in time with the Income Tax Department, on mere late issue of tax deduction certificate, there was no loss to the Revenue and the delay in furnishing the tax deduction certificate was held to be merely technical or venial in nature and penalty levied under section 272A(2)(k) of the Act was deleted. It may be clarified herein that earlier under section 272A(2)(k) of the Act, penalty was leviable where the tax deduction certificate was not issued in time. However, by Finance (No.2) Act, 2004 w.e.f. 01.04.2005, it has been provided that where a person fails to deliver or cause to be delivered copy of statement within time specified in section 200(3) of the Act or the proviso to section 206C(3) of the Act, then he shall pay by way of penalty sum of Rs.100/- for every day of default. It is further provided under the said subsection that the amount of penalty for failure shall not exceed the amount of tax deductible or collectable, as the case may be. It is further provided that no penalty shall be levied under clause (a) for failure to furnish the statement under section 200(3) of the Act or proviso to section 206C(3) of the Act, on or after first day of July, 2012.*

25. ....

26. ....

27. ....

*28. On the other hand, various Benches of Tribunal have time and again held that where there was case of reasonableness, there was no merit in levying the penalty under section 272A(2)(k) of the Act. Thus, in order to adjudicate the issue before us, we accept the case of reasonable cause as relevant to section 273B of the Act put up by the assessee in the respective cases in the appeals before us, which admittedly relate to different quarters of assessment year 2011-12. Where for the first time, there was requirement of e-TDS furnishing of TDS statement and since there were certain complications in e-filing of TDS returns because of system failure, which admittedly, was amended 18 times by the Department, the delay in furnishing the said returns late could not be attributed to the assessee. The onus was upon the authorities to provide platform for easy compliance to newly introduced provisions of the Act. Where such facilities could not be*

*provided by the authorities and the technical support not being available to small assesseees, who are in appeal before us, then the delay in furnishing the e-TDS returns late should be liberally construed. Hence, there was practical difficulty on the part of assessee to comply with newly introduced requirement of e-TDS filing of TDS statements, being technical delay and not venial in nature, merits to be considered as reasonable cause for non levy of penalty as per the requirements of section 273B of the Act. We hold so. In this bunch of appeals, there are cases where the assessee has defaulted in not depositing tax deducted at source in time, in such cases, the returns were delayed because of default on behalf of the deductor. In such cases, penalty under section 272A(2)(k) of the Act is leviable. However, the same is to be restricted from the date of payment of TDS to the date of filing e-TDS statements since e-TDS statements cannot be filed without payment of TDS to the credit of Central Government. Similar ratio has been laid down by the Chandigarh Bench of Tribunal in M/s. Ashirwad Complex Vs. JCIT (TDS) (supra). Accordingly, we hold so.*

*29. Another issue raised in some of the appeals is that where all quarterly returns relating to assessment year 2011-12 were filed on one date i.e. there was default in furnishing the returns for each of the quarters late, the case of the assessee was that because of overlapping default, penalty at best should be restricted to quarter No.1 and no penalty should be levied for the subsequent quarters. We find merit in the above plea of the assessee and accordingly, we direct the Assessing Officer to restrict the penalty leviable to first quarter which is in default and for the overlapping default, no penalty is to be levied under section 272A(2)(k) of the Act. We direct the Assessing Officer to verify the claim of assessee in this regard and work out the penalty accordingly.*

*30. The issue arising in other appeals before us is identical and following our directions in the paras hereinabove, the Assessing Officer in the case of individual assessee has to verify the claim of assessee and work out penalty, if any, leviable accordingly after affording reasonable opportunity of hearing to the assessee.”*

6. Thus, from the perusal of above decision it is unambiguously clear that the reasonable cause for filing belated return of levy of penalty u/s. 272A(2)(k) of the Act can be considered u/s. 273B of the Act. Nothing has been brought on record before us by the Department that in the subsequent quarters of Financial Year 2010-11 the assessee has furnished e-TDS return belatedly. Thus, in the facts of the case and the decision of

Co-ordinate Bench, the penalty levied u/s. 272A(2)(k) is deleted and the appeal of assessee is allowed.

7. In the result, impugned order is set aside and the appeal of assessee is allowed.

Order pronounced on Wednesday, the 28<sup>th</sup> day of February, 2018.

|                                      |                                 |
|--------------------------------------|---------------------------------|
| Sd/-                                 | Sd/-                            |
| (डी. करुणाकरा राव/D. Karunakara Rao) | (विकास अवस्थी / Vikas Awasthy)  |
| लेखा सदस्य / ACCOUNTANT MEMBER       | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> February, 2018

RK

**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)-10, Pune
4. आयकर आयुक्त / The CIT(TDS), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune