

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.1038/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Kranti Liquors,
139B, Nath Warehousing Company,
Phursungi Village,
Distt.-Pune – 412308

PAN : AAEFK0663M

.....अपीलार्थी / Appellant

बनाम / V/s.

Additional Commissioner of Income Tax,
TDS Range, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil R. Parmar
Revenue by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 28-02-2018
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 14-03-2016 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 376 days in filing of quarterly e-TDS return. The Assessing Officer issued show cause notice to the assessee on 24-09-2012. 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.37,600/- @ Rs.100/- per day for delay of 376 days in filing of e-TDS return for first quarter of Financial Year 2010-11.

Aggrieved by the order dated 29-11-2012 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 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. Shri Nikhil R. Parmar appearing on behalf of the assessee submitted that there has been delay of 376 days in filing e-TDS return for the first quarter of Financial Year 2010-11. The assessee is engaged in wholesale business of Indian Made Foreign Liquor (IMFL) and beer. The assessee supplies IMFL and beer to several retail wine shops, permit rooms and beers shop in and around Pune. The assessee collects tax at source at 1% on sales made to the retailers and deposits the same to the Government exchequer. The assessee has collected the tax at source and deposited the same to the Government account. However, to compile information of various deductees for filing TDS return it took some time. Therefore, the e-TDS return of first quarter in Financial Year 2010-11 could not be filed within the time prescribed. The ld. AR submitted that the Jaipur Bench of Tribunal in the case of M/s. Argus Golden Trades India Ltd. in ITA No.

522/JP/2016 for assessment year 2011-12 decided on 24-05-2017 deleted the penalty levied u/s. 272A(2)(k) of the Act where the e-TDS return could not be filed within time on account of delay in collecting information. The Id. AR furnished the copy of order in the aforementioned case.

4. On the other hand Shri Mukesh Jha representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) in confirming levy of penalty. The Id. DR submitted that the provisions of section 273B does not permit acceptance of any explanation for delay in filing of return howsoever genuine it may be for deleting penalty.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The penalty u/s. 272A(2)(k) has been levied for delay of 376 days in filing of e-TDS return for first quarter of Financial Year 2010-11. The penalty has been levied @ Rs.100/- per day aggregating to Rs.37,600/-. The Commissioner of Income Tax (Appeals) has confirmed levy of penalty on the ground that benefit of section 273B cannot be granted to the assessee even if there is reasonable cause to explain the reasons behind inordinate delay in filing quarterly TDS statement.

6. We are of considered view that the Commissioner of Income Tax (Appeals) has erred in holding that benefit of section 273B cannot be granted to the assessee in respect of penalty levied u/s. 272A(2)(k) of the Act. A bare perusal of section 273B would show that any penalty levied u/s. 272A(2)(k) wherein the assessee has been able to explain reasonable cause for the failure to file return in time can be deleted. Our view is supported by the decision of 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.

7. The ld. AR has drawn our attention to the decision of Jaipur Bench of Tribunal in the case of M/s. Argus Golden Trades India Ltd. (supra) wherein penalty u/s. 272A(2)(k) has been deleted where the assessee was required to collect information for filing TDS return from large number of deductees spread throughout the country. The reason furnished in the above mentioned case was accepted as reasonable cause for delay in furnishing of return. We find merit in the submissions of ld. AR. Thus, in the light of case laws mentioned above, we hold that the assessee has been able to show reasonable cause within the meaning of section 273B of the Act. Accordingly, penalty levied u/s. 272A(2)(k) is deleted and the appeal of assessee is allowed.

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

Order pronounced on Wednesday, the 28th 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 : 28th 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