

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos. 220 to 222/Bang/2018
Assessment Years : 2009-10 to 2011-12

M/s. Partek Computers and Software Solutions Pvt. Ltd., No. 102, Devaki Apartments, Sridevi College Road, Ballalgagh, Mangaluru – 575 003.  <b>PAN: AACCP4229K</b>		The Income Tax Officer, Ward – 1 (1), Mangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri R. Chandrashekar, Advocate
Respondent by	:	Shri Balakrishnan .N, Addl. CIT (DR)

Date of hearing	:	28.02.2018
Date of Pronouncement	:	28.02.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

All these three appeals are filed by the assessee and these are directed against three separate orders of Id. CIT(A)-10, Bangalore all dated 25.10.2017 for Assessment Years 2009-10, 2010-11 and 2011-12.

2. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience. The grounds raised by the assessee in these three appeals are identical except difference in amounts and therefore, I reproduce the grounds from Assessment Year 2009-10 in ITA No. 220/Bang/2018. The grounds are as under.

*“1. The learned Commissioner of Income Tax (Appeals) erred in holding the order of penalty is not opposed to principles of natural Justice, when the submission of the Appellant was that the learned Respondent without considering the reply to show cause notice, concluded order of penalty.*

*2. The learned Commissioner of Income Tax (Appeals) failed to*

*appreciate that there is no absolute default and the appellant obtained Audit report as required U/s.44AB of the Act and has filed the same along with return, which shows the bonafides of the appellant in complying the provisions of the Act.*

*3. Levy of penalty of Rs.49,727/- U/s.271B of the Act, when compared to tax payable which is nil ought to have considered in considering the circumstances, an provisions of section 273B of the Act, oughtto have been considered by the learned Authority.*

*4. The learned Commissioner of Income Tax (Appeals) ought to have held the consideration of explanation to section 271F of the Act is relevant in deciding the issue in relation to penalty U/s.271B of the Act.*

*Appellant craves leave of the Hon'ble Tribunal to add/modify/delete any other ground or grounds at the time of hearing”*

3. The amount of penalty imposed by the AO in Assessment Year 2010-11 is Rs.67,158/- and in Assessment Year 2011-12, the amount of penalty is Rs. 61,773/-. It was submitted by Id. AR of assessee that the decision of CIT(A) is contained in the Para on page nos. 5 and 6 of his order as per which it was submitted by Id. AR of assessee before CIT(A) that in response to the notice issued by the AO for imposing penalty, the assessee filed its reply on 26.06.2015 but it was not considered and on the same date, the AO issued the penalty order u/s. 271B. He submitted that in the interest of justice, the matter should be restored back to the file of AO for fresh decision after considering the reply of the assessee filed before him on 26.06.2015. He also submitted that the copy of said reply is available on page no. 1 of the paper book. The Id. DR of revenue supported the orders of authorities below.
4. I have considered the rival submissions. I find that the reply filed by the assessee before the AO on 26.06.2015 was not considered by the AO. In the said reply, the assessee has narrated the reasons for the delay in obtaining tax audit report as per which it is stated that there was complete loss of accounting data in Assessment Year 2009-10 caused by crash of Hard Disk due to the effect of short circuit in the business premises of the assessee in the month July 2009 and the back-up computer was also damaged in that accident of

short circuit and as such, there was no data available at that time. It is also stated in the said application that it took the assessee nearly one year to rebuild the data by getting copies of invoices, statements etc. so that the assessee could prepare the final accounts for Assessment Year 2010-11 and later years. As per the provisions of section 273B of IT Act, the penalty under various sections including section 271B of the IT Act cannot be imposed if assessee is able to establish that there was reasonable cause for the assessee's failure for which penalty is being proposed. Regarding the applicability of section 273B in the present case, there is no finding given by AO or CIT(A). The CIT(A) has also noted that it was stated before him that penalty proceedings initiated by AO u/s. 271F of IT Act were dropped by the AO and therefore, it was a request of the assessee that since penalty was dropped u/s. 271F on considering the same reasoning given by the assessee, the penalty should be dropped u/s. 271B also. About this aspect, the CIT(A) has held that proceedings u/s. 271F and 271B are separate and therefore, the decision in one proceedings cannot be considered in second proceedings. I find that penalty u/s. 271F is imposable if the assessee does not furnish the return of income within the time prescribed u/s. 139 (1) of IT Act. U/s. 273B, section 271F is also covered and this is essential to see as to what is the basis adopted by AO for dropping penalty proceedings u/s. 271F. If the penalty proceedings u/s. 271F is dropped by the AO on the basis of same reasoning which are given by the assessee for dropping of penalty u/s. 271B, and if the applicability of section 273B has been accepted in the course of those proceedings, it cannot be rejected in the present proceedings.

5. Hence under these facts, I feel it proper to restore the matter back to the file of CIT(A) for fresh decision. Accordingly, I set aside the order of CIT(A) in all these three years and restore the matter back to the file of CIT(A) for fresh decision with the direction that CIT(A) should examine the basis adopted by the AO for dropping the penalty u/s. 271F of the IT Act. The CIT(A) should also examine the applicability of section 273B of the IT Act in present proceedings in these years in respect of penalty proceedings u/s. 271B and then decide the issue afresh after providing adequate opportunity of being heard to both sides.

If required, CIT (A) may obtain remand report regarding applicability of section 273B in the facts of the present case.

6. In the result, all the three appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 28<sup>th</sup> February, 2018.  
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,  
Income Tax Appellate Tribunal,  
Bangalore.