

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", 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.1425/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Canara Bank,
Bibvewadi Branch,
S.No.635, A/B. Bibvewadi,
Pune – 411 037
PAN : AAACC6106G

.... अपीलार्थी/Appellant

Vs.

Addl.CIT (TDS) Range,
Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Lalit S. Sangle
Revenue by : Shri Mukesh Jha, JCIT

सुनवाई की तारीख / Date of Hearing : 03.05.2018	घोषणा की तारीख / Date of Pronouncement: 09.05.2018
--	--

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Assessee against the order of CIT(A)-10, Pune, dated 14-03-2016 for the Assessment Year 2011-12.

2. Assessee raised a solitary ground and the same is extracted as under :

"1. On the facts and in the circumstances of the case and in law the Ld.CIT(A)-10, Pune erred in holding that for a penalty imposed u/s.272A(2)(k) the ordinary effect of section 273B does not apply as the said penalty has not found place in section 273B of the I.T. Act and only penalty impossible u/s.272A(2)(c) and (d) have found place and accordingly, the appellant cannot get benefit of section 273B, even if, there are reasonable grounds to explain the reason behind inordinate delay in filing the quarterly TDS statement as envisaged u/s.200(3) of the I.T. Act,"

3. **Condonation of Delay of 48 days :** At the outset, it is brought to our notice that there is 48 days delay in filing the appeal by the assessee. Ld. Counsel referred to the affidavit dated 02-08-2016 wherein the assessee stated that *“due to busy ending schedule, closure of annual accounts and various annual compliance reports, the Ld.CIT(A)’s order received was inadvertently placed in a wrong file by the staff and was located late, causing delay of 48 days in filing the appeal”*. On considering the contents of the affidavit, we find there is reasonable cause for filing the appeal by the assessee with a delay of 48 days. Therefore, we condone the delay in filing the appeal and admit the appeal for adjudication.

4. Coming to the **grounds on merits**, briefly stated relevant facts of the case are that the assessee is Nationalised bank and filed its return of e-TDS u/s.200(3) in Form No.26Q for the Ist quarter of F.Y. 2010-11 on 18-07-2010 as against the statutory due date of 15-07-2010. Thus, there was delay of 368 days. AO vide his order dated 26-12-2012 invoked the provisions of section 272A(2)(k) and levied penalty of Rs.36,800/- @ Rs.100/- for each day of delay and treated the assessee as assessee in default.

5. Being aggrieved by the order of AO, assessee filed an appeal before the CIT(A). There was also a delay of 5 months in preferring the appeal which was condoned by the CIT(A). However, coming to the issue of penalty on merits, the CIT(A) after discussing the provisions of section 273B rejected the submissions made by the assessee and confirmed the penalty levied by the AO.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal with the solitary ground extracted above.

7. At the outset, before us, Ld. Counsel for the assessee referring to the written submissions dated 27-04-2018 submitted that this is a covered issue in favour of the assessee by virtue of decision of the Pune Bench of the Tribunal in the case of Ajay Narayanrao Sayalkar Vs. JCIT in ITA No.715/PUN/2016, dated 25-01-2018 for the A.Y. 2011-12. Ld. Counsel also relied on the decision of Chandigarh Bench of the Tribunal in the case of Corporation Bank Vs. JCIT (TDS), Chandigarh in ITA No.161/Chd/2015, dated 15-09-2015. Copies of the said orders of the Tribunal are placed before us.

8. Ld. DR for the Revenue heavily relied on the orders of the AO and the CIT(A).

9. We heard both the sides and perused the orders of the Revenue as well as the decisions relied on by the Ld. Counsel for the assessee on the issue under consideration. On perusing the facts of the case and the decision of Pune Bench of the Tribunal in the case of Ajay Narayanrao Sayalkar Vs. JCIT (supra), we find the issue is similar to the one adjudicated by the Tribunal. While allowing the appeal of the assessee, the Tribunal followed the consolidated order of the Tribunal in the case of Nav Maharashtra Vidyalaya Vs. Addl.CIT (TDS), Range, Pune and others in ITA No.832/PN/2016 & others, dated 07-10-2016 for the A.Y. 2011-12. Therefore, we find it relevant to extract the operational paras of the Tribunal in the case of Ajay Narayanrao Sayalkar Vs. JCIT (supra) here as under :

*“8. The case of the assessee before us is that the delay in submission of e-TDS return was because of the **problem of awareness of Return Preparation Utility**, which was updated by NSDL in the first year, i.e. assessment year 2011-12. Because of the requirement of e-TDS furnishing of TDS statement arising for **the first time in assessment year 2011-12, there were problems faced by the assessee** and hence, the delay in filing quarterly TDS return late. We hold that the assessee had reasonable cause in not furnishing the same in time and in view of the provisions of section 273B of the Act, we hold that the*

assessee is not liable to levy of penalty under section 272A(2)(k) of the Act. Hence, the Assessing Officer is directed to delete the same.”

10. Since the facts of the present case are similar to the one adjudicated by the Tribunal, we hold that assessee is not liable to penalty u/s.272A(2)(k) of the Act. Accordingly, the solitary ground raised by the assessee is allowed.

11. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 09th day of May, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 09th May, 2018
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-10, Pune
4. CIT-10, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B Bench” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune