

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राँव, न्यायिक सदस्य एवं श्री भागचन्दादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 999, 1000 & 1006/JP/2017  
निर्धारण वर्ष/Assessment Years : 2011-12 (1st to 4th Qtr.)

M/s. World Trade Park Ltd., (Formerly known as R.F. Properties and Trading Ltd., World Trade Park, JLN Marg, Jaipur.	बनाम Vs.	The JCIT (TDS) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/TAN No. JPRR 04161 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Sharma (Advocate)  
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (JCIT)

सुनवाई की तारीख / Date of Hearing : 09.05.2018.  
घोषणा की तारीख / Date of Pronouncement : 11/05/2018.

आदेश / ORDER

PER BENCH :

These three appeals by the assessee are directed against three separate orders of Id. CIT (A)-3, Jaipur all dated 23rd October, 2017 arising from penalty order passed under section 272A(2)(k) of the Income Tax Act for the assessment year 2011-12. The assessee has raised the common ground in these appeals except the quantum of penalty levied under section 272A(2)(k). The ground raised in ITA No. 999/JP/2017 is as under :-

" 1. That the CIT (A)-III, Jaipur has grossly erred in upholding imposition of penalty of Rs. 2,79,400/- under section 272A(2)(k)."

2. The AO noted that the assessee has defaulted in filing the quarterly statement/return in respect of the TDS on salary payment as well as other payments. Accordingly, the AO issued show cause notices to initiate the proceedings for levy of penalty under section 272A(2)(k) for late/non filing of TDS statements by the assessee in the prescribed Form no. 24Q and 26Q. The assessee explained the reasons for delay in compliance of the provisions of deduction of tax and payment of the same as well as filing the quarterly TDS statement that the payment could not be made due to financial difficulties and since the payment has not been made, the TDS return could not be filed as required by the Scheme of TDS Returns. The AO after considering the submissions of the assessee came to the conclusion that non deposit of TDS on time itself attracts initiation of prosecution proceedings, therefore, the explanation of the assessee was not acceptable to the AO. Consequently, the AO levied the penalty under section 272A(2)(k) of the Act. The assessee challenged the action of the AO before Id. CIT (A) and further explained the cause of delay in filing the e-TDS statement in Form No. 24Q and 26Q was on account of the fact that CPC computer system generate number for acknowledgement for the receipt of such statement which was not in the hands of the assessee. The generation of the number could not occur till such time the PAN and information available on 26AS were tallied by the computer system itself. The contention and explanation of the assessee did not find favour from the Id. CIT (A) and accordingly the penalty levied under section 272A(2)(k) was confirmed by the Id. CIT (A).

3. Before us, the Id. A/R of the assessee has contended as under :-

(a) Delay in filing e-TDS statement in Form No. 24Q and 26Q was on account of the facts that CPC computer systems generate number for

acknowledging the receipt of such statements which was not in the hands of the appellant. The generation of that number could not occur till such time, the PAN and information not available on 26AS were tallied by the computer system itself. The relevant software was also not available to the Franchisee outsourced by the department or NSDL being the apex nodal agency. Therefore, there was delay in the generation of number for filing the statements. The circumstances were therefore beyond the control of the assessee resulting in delay in e-filing of TDS returns.

- (b) During the period there was genuine difficulty in uploading the TDS returns since the number could not be generated till the time PAN and information available in 26AS was tallied by the computer system itself as acknowledged in the decision of State Bank of India v. JOT (TDS) 68 SOT 370 (cuttack).
- (c) Furthermore the presumption of AO that the penalty is automatic and has to be levied in routine and mechanic manner is not correct. It is also to be noted that there is no allegation that there is delay in depositing the TDS. The only reason for levying the penalty is the consequential filing of 24Q and 26Q. Mere delay in filing the quarterly returns particularly where the taxes deposited are in time and for which there is no dispute would not be justifiable for visiting the appellant with the penalty proceedings.
- (d) Act of the assessee cannot be said to be intentional or willfull and therefore penalty should not be imposed because the assessee was prevented by sufficient cause.

(e) Non filing of TDS return does not involve any revenue loss and is merely a technical default.

(f) The assessee did not derive any benefit from non-filing of quarterly statements in time as the amount of TDS was duly deposited in the government treasury within the prescribed time. Such delay has not caused any loss to the revenue.

He has further submitted that there is no fault under section 200(3) or even 206C(3) as stipulated under section 272A(2)(k) and thus penalty imposed under section 272A(2)(k) deserves to be deleted. He has reiterated the submissions as made before the CIT (A). The Id. A/R relied on the order of the Jaipur Bench of the Tribunal in the case of Argus Golden Trades India Ltd. vs. Jt. Commissioner of Income-tax, TDS, Jaipur, 82 taxmann.com 479. The Id. A/R has also referred to the Notification No. 41/2010 dated 31<sup>st</sup> May, 2010 and submitted that quotation of PAN in the statement is mandatory. Therefore, in the absence of the PAN of all the deductees it is not possible to submit the quarterly TDS statement and hence the delay due to the reason explained by the assessee is a bonafide explanation for which no penalty under section 272A(2)(k) is leviable.

3.1. On the other hand, the Id. D/R has submitted that the AO has initiated the penalty proceedings for default in filing the quarterly TDS statement by the assessee. He has further contended that so far as the PAN of the deductees is concerned, the assessee cannot take this excuse when the assessee is paying salary to its employees without compliance of the provisions of section 200(3) or 206C of the IT Act. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee has taken a legal objection against the validity of the order passed under section 272A(2)(k) and submitted that the AO has not specified the default of the assessee whether it is for not filing of TDS return or for not filing of TDS statement. In support of his contention, he has relied upon the decision of Coordinate Bench of this Tribunal in the case of *Argus Golden Trades India Ltd. vs. Jt. Commissioner of Income-tax, TDS, Jaipur (supra)*. We find that as per the impugned order passed under section 272A(2)(k), the AO has levied the penalty due to the default of the assessee in filing the quarterly TDS statement in Form No. 24Q and 26Q. It is pertinent to note that the Form No. 24Q and 26Q are required for submitting the quarterly TDS statement in respect of TDS on salary and TDS on non salary payments. Therefore, the penalty has been levied by the AO against the default of not submitting/delivering the quarterly TDS statements. We further note that the Annual TDS Return is filed as per Form No. 24 and 26 and, therefore, there is a clear distinction between the two requirements of filing the quarterly TDS statement and Annual TDS return. The forms are also separately provided for the purpose of filing the quarterly TDS statement as well as for Annual TDS return in Form No. 24Q and 26Q as well as Form No. 24 and 26 respectively. Since the assessee has raised a legal objection which was not raised before the authorities below and further the said objection of the assessee can be considered and decided only after considering the show cause notice issued by the AO to ascertain whether there was any defect and illegality in the show cause notice for initiation of penalty u/s 272A(2)(k) of the Act. Accordingly, in the facts and circumstances of the case when this issue was not raised before the authorities below and further the show

cause notice issued by the AO is not available before us, we set aside the matter in these three appeals to the record of the Id. CIT (A) for re-adjudication of the same after considering the objection raised by the assessee. Needless to say, the assessee be given an appropriate opportunity of hearing before passing the fresh order.

4. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 11/05/2018.

Sd/-

( भागचन्द )  
( BHAGCHAND )

लेखा सदस्य / Accountant Member  
जयपुर / Jaipur  
दिनांक / Dated:- 11/05/2018.  
das/

Sd/-

( विजय पाल राँव )  
( VIJAY PAL RAO )

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-M/s. World Trade Park Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent-The JCIT, TDS, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 999, 1000 & 1006/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar