

आयकर अपीलीय अधिकरण, पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", 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.1035/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

The Poona Stud Farm Pvt. Ltd.,
(i.e. amalgamated company)
For Astonish Stud Private Limited,
16-B/1, Sarosh Bhavan,
Dr. Ambedkar Road,
Pune – 411 001
PAN : AADCA4310P

.... अपीलार्थी/Appellant

Vs.

DCIT, Central Circle-1(1),
Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak & Shri Vishnu Bhutada
Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 31.05.2018	घोषणा की तारीख / Date of Pronouncement: 01.06.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the Assessee against the order of CIT(A)-10,
Pune, dated 21-01-2016 for the Assessment Year 2011-12.

2. Assessee raised the following grounds in the appeal:

“On the facts & circumstances of the case and in law :

1. *The Ld.CIT(A) erred in confirming the levy of penalty u/s. 272A(2)(k) of the Income Tax Act, 1961 of Rs.44,900/- by holding that said penalty could not be deleted since the benefit of reasonable cause as enumerated in section 273B did not cover the penalty levied u/s.272A(2)(k).*

2. *The Ld.CIT(A) failed to appreciate that the penalty levied u/s.272A(2)(k) was also covered in section 273B and since the assessee has a reasonable cause for the delay in filing the TDS quarterly statement, no penalty could be levied u/s.272A(2)(k) and hence, the penalty levied should be deleted.*

3. *The appellant craves leave to add, alter and/or withdraw any ground of appeal at the time of appeal hearing.”*

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. Briefly stated relevant facts of the case are that the assessee M/s. The Poona Stud Farm Pvt. Ltd. is an amalgamated company and filed its return of TDS u/s.200(3) in Form No.26Q for the 2nd quarter of F.Y. 2010-11 on 07-01-2012 as against the statutory due date of 15-10-2010. Thus, there was delay of 449 days. AO vide his order dated 18-12-2012 invoked the provisions of section 272A(2)(k) and levied penalty of Rs.44,900/- @ Rs.100/- for each day of delay and treated the assessee as assessee in default.

4. Being aggrieved by the order of AO, assessee filed an appeal before the CIT(A). The CIT(A) after considering the submissions made by the assessee and discussing the provisions of section 273B confirmed the penalty levied by the AO.

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

6. At the outset, before us, Ld. Counsel for the assessee brought our attention to the grounds and submitted that this is the case of levy of penalty u/s.272A(2)(k) of the Act amounting to Rs.44,900/- for delay of 449 days in filing the TDS statements electronically relating to 2nd Quarter. He submitted that this is the first year of introduction of a new procedure of e-filing of TDS quarterly statements. Further, there was an event of amalgamation during the year and the assessee was an amalgamated company. These unusual events contributed to the delay

in filing the TDS statements. Further, Ld. Counsel for the assessee 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. He read out the contents of Para No.8 of the order of the Tribunal and submitted that, the reasons for delay since common, the said decision of the Tribunal apply to the facts of the present case. Ld. Counsel also filed the copy of order of Ahmedabad Bench of the Tribunal in the case of ACIT Vs. Lok Prakashan Limited – ITA No. 2815/Ahd/2009, dated 08-01-2010 for the A.Y. 2007-08. Assessee also filed the order of Hon'ble Bombay High Court approving the amalgamation of the company apart from challans representing the TDS payments.

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

8. 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, we find this is a case where the assessee remitted the TDS in time and however, there was a delay of 449 days in filing e-TDS statements for 2nd Quarter. There is no dispute on the fact that the assessment year under consideration is A.Y. 2011-12. On similar facts, we find the Tribunal, in the case of Ajay Narayanrao Sayalkar Vs. JCIT (supra) granted relief to the assessee as per the discussion given in Para No.8 of the order. 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 para 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.”

9. 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 grounds raised by the assessee are allowed.

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

Order pronounced in the open court on this 01st day of June, 2018.

Sd/-

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

(D. KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 01st June, 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, “A Bench” Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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