

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 170,171,172 & 173/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14 (26Q:1st to 4th Qtr)

M/s World Trade Park Limited (Formerly known as R.F. Properties & Trading Ltd.) World Trade Park J.L.N. Marg, Jaipur	बनाम Vs.	ACIT TDS Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No.: JPRR04161D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Sharma (Advocate)
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 12/06/2018
घोषणा की तारीख / Date of Pronouncement: 14/06/2018.

आदेश / ORDER

PER BENCH:

These are four appeals filed by the assessee against the levy of penalty u/s 271H for each of the four quarters of FY 2012-13 relevant to AY 2013-14. Since common issue regarding levy of penalty u/s 271H is involved, all these appeals were heard together and are being disposed off by this consolidated order.

2. Briefly stated, the facts of the case are that there is a delay in filing of quarterly returns of TDS in prescribed Form No. 26Q for each of the four quarters of the FY 2012-13 as required 200(3) of the Act. In this regard, a show cause was issued to the assessee u/s 271H dated 04.06.2015. In

response, the assessee has submitted that delay in filing of TDS quarterly statements has happened due to non-depositing of taxes at source. As per the Assessing Officer, the said contention of the assessee cannot be accepted as the assessee is not filing the quarterly TDS statements even after depositing of the taxes and since there is delay in filing the statement the provisions of section 271H are attracted and he therefore, levied the penalty of Rs. 20,000/- for each of the 4 quarters.

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) and the relevant finding of the Id. CIT(A) are contained at Para 4.3 of his order which is reproduced as under:-

"4.3 I have carefully considered the material before me. I find that the Assessing Officer imposed penalty u/s 271H of the I.T. Act making observation that it could not file statement since he had not deposited tax is not acceptable, since the assessee is not tiling statement even after depositing tax. As provisions of IT Act the assessee is required to deduct & deposit tax in time and also file its statements on time. Since the assessee has not deposited the statement on time, the provisions of section 271H are attracted.

The AR of the appellant submitted that the assessee company constructed a prestigious commercial building complex known as World Trade Park, JLN Marg, Jaipur. However due to great recession in property market the spaces in said commercial complex could not be sold and investment made by assessee got locked and this resulted in great burden of Bank loan and Trade creditors. The company left with very availability of cash and, therefore the TDS deducted by assessee could not be paid in time the quarterly TDS return in form 24Q and 26Q could not be filed within allowed time. The assessee besides pay tax interest and also paid late filing fees u/s 234E.

Thus on these facts of the case the assessee prevented with reasonable cause and therefore no penalty u/s 271H r/w section 273B should have been levied. The assessee therefore, prays that penalty levied for each Qr. Separately for late filing of form 24Q and 26Q (eight penalties of Rs. 20,000/- each) may kindly be deleted.

Without prejudice to above the assessee prays that relief available u/s 271H (2) may kindly be granted. The Id. AO imposed penalty of Rs. 20,000/- in each Qr. Separately for form 24Q and 26Q. While as per section 271H (1) the minimum penalty leviable is only Rs. 10,000/-. The assessee having deposited tax, interest and fees and as stated above prevented with sufficient cause in filing these returns and so it prays that it should not be visited with a penalty of more than minimum. It is therefore, prayed than penalty in each case may kindly be reduced to minimum of Rs. 10,000/- only.

I perused the record I find that the appellant failed to file any genuineness cause which prevent to appellant to file the Quarterly return in time. Therefore the penalty imposed by the ACIT TDS u/s 271H(2) of the I.T. Act. The minimum penalty as per section 271H(2) is Rs. 10,000/-. Since the appellant having deposited tax, interest and fees it is reasonable to restrict a minimum penalty of Rs. 10,000/- u/s 271H of the I.T. Act. Accordingly, I confirm penalty of Rs. 10,000/- and balance of Rs. 10,000/- is cancelled. This ground is partly allowed.”

4. Now, the assessee is in appeal against the confirmation of penalty to the tune of Rs 10,000 for each of the four quarters u/s 271H of the Act. During the course of hearing, the Id. AR has submitted that the assessee had a genuine reason for the delay in filing quarterly return as the assessee was facing financial hardship and which resulted in delay in deposit of tax and consequent delay in filing the Form 26Q and it was accordingly submitted that the assessee was prevented by reasonable cause and penalty so levied by the AO and confirmed by the Id CIT(A) may kindly be deleted.

5. The Id DR is heard who has relied on the findings of the lower authorities. It was submitted by the Id DR that the Id CIT(A) has already reduced the penalty from Rs 20,000 to Rs 10,000 for each of the quarters, being the minimum penalty leviable under section 271H of the Act. It was further submitted that the contention of the Id AR regarding financial hardship cannot be accepted once the taxes have been deposited. It was further submitted that there is no reasonable cause which has been demonstrated through verifiable evidence regarding the delay in filing of quarterly statements even after the taxes have been deposited. It was accordingly submitted that the order of the Id CIT(A) may kindly be confirmed.

6. In order to appreciate the rival contentions, we refer to the provisions of section 271H which reads as under:-

"271H (1) Without prejudice to the provisions of the Act, the Assessing Officer may direct that a person shall pay by way of penalty, if, he—

(a) fails to deliver or cause to be delivered a statement within the time prescribed in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C; or

(b) furnishes incorrect information in the statement which is required to be delivered or cause to be delivered under sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

(3) Notwithstanding anything contained in the foregoing provisions of this section, no penalty shall be levied for the failure referred to in clause (a) of sub-section (1), if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the

Central Government, he had delivered or cause to be delivered the statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C before the expiry of a period of one year from the time prescribed for delivering or causing to be delivered such statement.

(4) The provisions of this section shall apply to a statement referred to in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C which is to be delivered or caused to be delivered for tax deducted at source or tax collected at source, as the case may be, on or after the 1st day of July, 2012."

7. On perusal of the order of the Id. CIT(A), the factual matrix regarding the delay in filing the quarterly return is as under:

Order u/s 271H /DCR No.	For delay in	Due Date of filing quarterly return	Date of filing	Period of Delay in days, as mentioned in the order u/s 271H	Remarks
5/51	Q4-26Q	31/05/2013	02/12/2014	185	-
6/51	Q3-26Q	15/01/2013	02/12/2014	321	-
7/51	Q2-26Q	15/10/2012	02/12/2014	413	-
8/51	Q1-26Q	15/07/2012	02/12/2014	140	-

8. On perusal of the above factual matrix, we find that in one case, there is delay in filing of quarterly statement of more than 365 days and in rest three cases, the delay is less than 365 days from the due date of filing

quarterly TDS statement. As per the sub-section 3 of section 271H, where the assessee after paying the taxes along with fee and interest, if any, deliver the statement before the period of 1 year from the prescribed due date of filing of such statement, no penalty shall be levied for the delay in filing the prescribed statement. In the result, the penalty levied in 3 cases is hereby directed to be deleted subject to verification of payment of taxes along with fee and interest. The penalty for the 2nd quarter wherein there is delay of more than 365 days, the provisions of section 271H(3) doesn't come to the rescue of the assessee and there is no reasonable cause which has been demonstrated for the delay in filing of TDS statement and hence, the penalty so confirmed by the Id. CIT(A) at Rs. 10,000/- is hereby confirmed.

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

Order pronounced in the open court on 14/06/2018.

Sd/-

(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 14/06/2018

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s World Trade Park Limited, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, TDS, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6. गार्ड फाईल / Guard File (ITA No. 170-173/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.