

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

श्री विजय पाल राँव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 166, 167, 168 & 169/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14 24Q1 to 24Q4.

M/s. World Trade Park Ltd., J.L.N. Marg, Jaipur.	बनाम Vs.	The ACIT, (TDS), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. /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 J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 19.06.2018.
घोषणा की तारीख / Date of Pronouncement : 21/06/2018.

आदेश / ORDER

PER BENCH :

These four appeals by the assessee are directed against four separate orders of Id. CIT (A) all dated 22nd December, 2017 arising from the penalty order passed under section 271H of the IT Act for the assessment year 2012-13 Q1 to Q4. The assessee has raised common grounds in these appeals. The ground raised in ITA No. 166/JP/2018 are as under :-

1. That the Commissioner of Income Tax (Appeals)-III has grossly erred in sustaining penalty of Rs. 10,000/-.
2. That the Commissioner of Income Tax (Appeals)-III has grossly erred in upholding the imposition of penalty levied u/s 271H as justified."

2. The AO noted that the assessee has failed to furnish/file the quarterly returns of TDS in the prescribed Form 24Q for the financial year 2012-13 as required under section 200(3) of the IT Act. Accordingly the AO issued a show cause notice under section 271H dated 4th June, 2015 for levy of penalty for default of non-submitting the quarterly TDS statement/return. The assessee contended that the assessee was facing financial difficulties and, therefore, could not pay the TDS by due dates after deducting the tax at the time of credit given to the deductee and, therefore, the assessee pleaded that there was a reasonable and sufficient cause for not submitting the quarterly TDS statement in time. The AO did not accept the contention of the assessee and observed that the assessee could not file the statement even after depositing the tax. Hence the AO levied the penalty of Rs. 20,000/- under section 271H for each quarter. The assessee challenged the action of the AO before Id. CIT (A) and reiterated its contention that there was a reasonable cause which has prevented the assessee in submitting the quarterly TDS statement/return in time. The Id. CIT (A) did not accept the explanation of the assessee, however, the penalty imposed by the AO of Rs. 20,000/- for each quarter was restricted to minimum of Rs. 10,000/- per quarter.

3. Before us, the Id. A/R of the assessee has submitted that the assessee could not deposit the amount in the Government account due to paucity of funds and, therefore, though the TDS was deducted at the time of crediting the amount in the account of the deductee, however, in the absence of availability of funds with the assessee, the assessee could not pay the same and, therefore, there was a delay in submitting the quarterly statement of TDS in Form No. 24Q and 26Q. The Id. A/R

has filed the statement of ledger account of M/s. Dewan Housing Finance Corporation Ltd. and submitted that the assessee was having a Escrow account and whatever funds were available with the assessee, was going to the Escrow account and, therefore due to non-availability of funds the assessee could not deposit the amount in the Government account and consequently the assessee could not file the statements within the period of limitation. The Id. A/R has further submitted that the AO has also passed the order under section 201(1) and 201(1A) for non-payment of TDS amount. He has filed a copy of the order dated 11.11.2013 under section 201(1) and 201(1A) of the Act. Thus the Id. A/R has pleaded that the non-availability of funds may be considered as a reasonable cause for not submitting the TDS statement in time and, therefore, as per the provisions of section 273B of the Act the explanation of the assessee be accepted as bonafide and the penalty levied by the AO under section 271H be deleted.

3.1 On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the Id. CIT (A) has given a specific finding that the assessee has failed to file the quarterly TDS statement despite deposit of tax. Thus when the period of one year is given to the assessee for submitting the statement to avoid the penalty and the assessee has failed even to submit the quarterly statement within the said period of one year from the due date of filing the statement, the penalty levied by the AO and sustained by Id. CIT (A) is justified.

4. We have considered the rival submissions as well as the relevant material on record. There is no dispute that the assessee has failed to submit the quarterly TDS statements within the period of limitation prescribed. The assessee has also not

disputed the failure on its part to submit the statement on due date. However, the assessee has taken the plea that due to paucity of funds the assessee could not pay the amount of TDS and consequently the quarterly TDS statement could not be submitted/delivered within the prescribed period as per the provisions of section 200(3) of the Act read with section 206C. Hence we find that the failure on the part of the assessee to furnish the quarterly statement is not in dispute. The only issue is whether the assessee was able to explain the cause of delay which is bonafide in terms of provisions of section 273B of the Act. As per sub section (3) of section 271H, no penalty shall be levied for the failure of the assessee to submit the quarterly statement and if the assessee proves that the tax deducted/collected along with fee and interest is deposited to the account of the Central Government and it had delivered the quarterly statement before the expiry of the period of one year from the time prescribed for delivering of such statement. Thus a further period of one year is also provided under sub-section (3) of section 271H in case the assessee deposited the amount of TDS along with fee and interest and also delivered the statement within the said extended period of one year. In the case in hand the assessee has also failed to comply with the provisions of sub-section (3) of section 271H. The AO as well as the Id. CIT (A) has observed that the assessee has failed to file the statement even after depositing the tax. This statement of the authorities below appears to be contrary to the fact because the AO has also passed the order dated 11.11.2013 under section 201(1) and 201(1A) of the Act by holding that the assessee has failed to deposit the tax and, therefore, the assessee was considered as assessee in default under section 201. The assessee has also filed the

statements of ledger account of M/s. Dewan Housing Finance Corporation Ltd and submitted that since the assessee was having Escrow account, all the funds available with the assessee were automatically going into the Escrow account and the assessee was not having any right to withdraw the funds. Thus the assessee was not having any funds available for depositing the TDS collected to the account of the Central Government. Since these facts have not been considered by the authorities below and particularly the reasons as recorded by the AO and Id. CIT (A) are prima facie contradictory to the order passed by the AO under section 201(1) and 201(1A), therefore, without expressing any view on the merits of the explanation of the assessee in terms of section 273B, we are of the considered opinion that the explanation of the assessee be considered afresh at the level of the AO. Accordingly, we set aside the impugned orders of the authorities below and remit the matter to the record of the AO for adjudication of the same afresh after considering the explanation of the assessee. Needless to say, the assessee be given proper opportunity of hearing.

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

Order is pronounced in the open court on 21/06/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur
Dated:- 21/06/2018.
Das/

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

1. The Appellant- M/s. World Trade Park Ltd., Jaipur.
2. The Respondent –The ACIT (TDS), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 166(4)/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

