**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DIVISION BENCH 'A', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No.1573/Chd/2017**
(Assessment Year : 2012-13)

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| The Commander Works Engineers,<br>Headquarter Bldg No.26,<br>New Lal Bagh, Patiala.<br><br>PAN: PTLH12424G<br>(Appellant) | Vs. | The JCIT (TDS),<br>Chandigarh.<br><br>(Respondent) |

Appellant by : Shri Vibhor Garg, CA
Respondent by : Shri Surinder Meena, JCIT

Date of hearing : 23.05.2018
Date of Pronouncement : 04.07.2018

## ORDER

**PER ANNAPURNA GUPTA, AM:**

This appeal has been preferred by the assessee against the order of learned Commissioner of Income Tax (Appeals)-1, Ludhiana (hereinafter referred to as CIT(Appeals)) dated 7.9.2017 relating to assessment year 2012-13, levying penalty u/s 272A(2)(k) of the Income Tax Act, 1961 (in short 'the Act'), for late filing of TDS returns.

2. Briefly stated, while perusing the TDS returns filed by the assessee, the jurisdictional Assessing Officer,TDS-1, Patiaia observed that the quarterly statement in form number. 24Q for the 1st, 2nd, 3rd and 4th quarters of the F.Y.2011-12 were filed on 03.03.2014, which otherwise was due to be filed on 31.07.2011, 31.10.2011, 31.01.2012 and 15.05.2012 respectively. There was, thus, a delay of 945 days, 855 days, 765 days and 660 days respectively in

delivering or causing to be delivered the said statement within the time specified in sub- section (3) of section 200 of the Act. The person responsible [hereinafter referred to as "PR"] making the aforesaid compliance was put to notice requiring him to show cause as to why penalty under the provisions of section 272A(2)(k) read with section 274 of the Act not to be levied for late filing of the quarterly statements. In response, it was submitted that TDS of officers and staff working in the jurisdiction of PR was being deducted by PCDA WC, Chandigarh and TDS return was also being filed by them. It was submitted that on 27.03.2012, PCDA WC, Chandigarh, directed the assessee PR to obtain separate TAN, DDO Registration No., DDO Code, PIN code of Patiaia office etc. Thereafter all the said things was applied and received and further intimated to PCDA (WC), Chandigarh on 09.01.2013. Further, no intimation was received from PCDA(WC), Chandigarh to the assessee regarding deduction and deposit of TDS. It was contended that only after receiving notice of ITO (IDS), Patiala regarding non filing of TDS return of 24Q of quarter 1, 2nd ,3rd and 4th of F.Y. 2011-12, the said TDS returns were filed on 03.03.2014. It was also stated that there was no malafide intention of the assessee in not submitting the statement in time. Reference was made of the decision of the ITAT Lucknow judgement 2011(5) TMI 831 in the case of

Branch Manager, PNB Vs Addl.Commissioner of Income Tax in IT Appeal No.285(Luck)2011, dated 31.05.2011.

4. Repudiating the submissions of the assessee, the Joint Commissioner of Income Tax, TDS, Chandigarh held that the delay in filing the statement was not occasioned by any reasonable and sufficient cause and proceeded to penalise the assessee under the provisions of section 272A(2)(k) of the Act, levying penalty of Rs.1,61,390/-.

5. The matter was carried in appeal before the CIT(Appeals) who dismissed the assessee's appeal stating that considering the period of default it was clear that the PR had treated the statutory provisions with contempt and that there was a conscious disregard of the obligation cast on it and thus no bonafide reason for the default. The Ld.CIT(A) held as under:

> *"6. The submissions of the appellant have been considered. There is no doubt that the penalty has been levied for the technical breach of not filing the quarterly statement within the stipulated period and that there was no loss in as much as the due taxes were paid on time. Even if the aforesaid technical breach be considered venial in view of the fact that there is no loss of revenue as taxes have been deducted and paid to the treasury of the Government, the default on the part of PR cannot be treated with levity as the responsibility cast upon him has not been discharged as per the statutory provision in this regard. It is also not a case of a default for a day or two. The default continued for more than a year which goes on to show that the PR treated the statutory provision of law with an undeserving contempt. If due care and caution is not exercised by the person responsible for making compliance to the provisions of law, the ensuing default cannot be considered as venial. The prescribed penalty for such a breach has been mandated by the statute. The PR is called upon to*

*effect compliance to the provisions in every quarter in respect of the withholding tax obligations, failng which the penalty has to be imposed. In the instant case, the PR cannot claim that the default was occasioned because of the bonafide belief that such quarterly statement can be filed as late as has been filed in the instant case. The default may not be contumacious but there is definitely a conscious disregard of the obligation cast upon the PR. Besides, if a default or a mistake can be avoided or obviated by exercising some care and caution, such default cannot be considered as occasioned by a reasonable cause or a sufficient cause. Imposition of penalty in such cases would also act as a deterrent for the PR to be careful and not cause breach of the statutory provision without any reasonable cause. The imposition of penalty is, hereby, confirmed. It is ordered accordingly."*

6. Aggrieved, the assessee has come up in appeal before us raising the following grounds:

*"1. Because the action for upholding the levy of penalty u/s 272A(2)(k) for Rs.1,61,390/- is being challenged on facts & law and the quantum thereof is being disputed too.*

*2. That the appellant prays for any consequential relief and or legal claim arising out of the present appeal and leave for any addition, deletion, amendment and modification in the grounds of appeal before the disposal of the same."*

7. Before us, the Ld. counsel for assessee reiterated the contentions made before the CIT(Appeals) that there was reasonable cause for the delay. Our attention was drawn to the submissions made in this regard before the CIT(Appeals) placed at Paper Book page 1 to 3 as under:

*The TDS of the appellant and officers and staff working under; him was being deducted at sources by PCDA WC, Chandigarh and return of TDS was being filed by them. On 27/03/2012 appellant had received a letter from PCDA WC, Chandigarh to apply and obtain separate TAN, DDO Registration No., DDO Code, PIN code of Patiala office. Thereafter all the above was applied in due course and we received the TAN on 19th April, 2012. We have intimated*

*all the above details to PCDA (WC), Chandigarh on 09/01/2013.*

*As no intimation was received from PCDA (WC), Chandigarh regarding deduction and deposit of TDS by appellant it was presumed that the tax continued to be deducted and deposited by the PCDA WC, Chandigarh in their own TAN for the F/Y. 2011-12. As such we had bonafide belief that that the required information of TDS for F/Y. 2011-12 was submitted by the Controlling Office Chandigarh to the Income Tax Authorities as in the past.*

*The ITO TDS- Patiala advised/required us to file the TDS returns, 24Q-1 to 24Q-4 for the F/Y. 2011-12 at Patiala vide her letter dated 09/01/2014 only than we came to know that the required informations for Patiala Office have not been filed. The sequence of correspondence with the PCDA (WC), Chandigarh and HQ Delhi and relevant records are enclosed herewith (Ann, Pg 1 to 37)"*

8. Referring to the above it was contended that earlier the TDS compliances were being done by PCDA WC and it was only on 27/03/12 ,when the due date for filing TDS returns of first three quarters of the year had expired,that it was asked to obtain and apply for TAN and other requirements for deducting TDS and even after the assessee had complied with the same it was never asked to take over the TDS compliances required under law.It was contended therefore that the assessee was of the belief that the TDS compliances would be continued by PCDA WC and it was only when notices of non compliance was received from the ITO-TDS that the assessee became aware of its default which was immediately complied with. Our attention was drawn to a datewise state of case annexed with the submissions as under:

## DATE WISE STATE OF THE CASE

1. PCDA WC Chandigarh asked for TAN No. vide their letter No. P/V/CHD/I.Tax dt 27 Mar 2012.
2. Submission of Form No. 49B for allotment of TAN No. vide letter No. 1200/Gen/14/E1P dt 04 Apr 2012.
3. TAN No. allotted by NSDL vide their letter No. TPU/C/PST/U dt 19 Apr 2012.
4. TAN No. intimated to PCDA WC vide letter No. 1200/Gen/83/E1P dt 09 Jan 2013.
5. PCDA has been requested to provide the details of income tax vide this HQ letter No 1204/P&A/42/EIP dated 24 May 2014.
6. Reminder issued to PCDA WC Chandigarh vide letter No 1204/P&A/Tue/EIP dated 13 Jun 2013, 1200/Gen/23/EIP dated 01 Aug 2013, 1200/Gen/30/EIP dated 31 Aug 2013, 1200/Gen/36/EIP dated 03 Sep 2013 and 1200/Gen/39/EIP dated 10 Sep 2013.
7. Rep of this HQ detailed to PCDA WC Chandigarh to finalise the income tax vide this HQ movement order No 1205/MO/Sub/35/EIP dated 13 Aug 2013, 1205/MO/Sub/39/EIP dated 05 Sep 2013, 1205/MO/Sub/61/EIP dated 20 Jan 2014, 1205/MO/Offrs/22/EIP dated 27 Jan 2014, 1205/MO/Offr/25/EIP dated 07 Feb 2014, 1205/MO/Sub/71/EIP dated 10 Mar 20141205/MO/Sub/83/EIP dated 06 May 2014, 1205/MO/Sub/100/EIP dated 11 Jul 2014, 1205/MO/Offr/51/EIP dated 22 Sep 2014.
8. When no response has been received from PCDA WC Chandigarh, the matter has been referred to Controller General of Defence Accounts (Complaints Cell), Delhi vide letter No 1200/Gen/02/EIP dated 24 Sep 2013.
9. Reminder issued to PCDA WC Chandigarh vide letter No 1200/Gen/IT/04/EIP dated 04 Oct 2013, 1200/Gen/IT/06/EIP dated 19 Oct 2013.
10. A response from Controller General of Defence Accounts received on 21 Oct 2013 with a direction to PCDA WC Chandigarh to finalise the case on priority.
11. A notice was received from Income tax officer (TDS), Patiala Smt Kiran Bala on 29.11.2013.
12. Controller General of Defence Accounts (Complaints Cell), Delhi approached again for not providing BIN No for the year 2011-12 vide letter No 1200/GEN/IT/15/EIP dated 18 Dec 2013.
13. Reminder to PCDA WC Chandigarh to finalise the case at the earliest vide letter No 1200/Gen/IT/23/EIP dated 13 Jan 2014 to avoid penalty from Income tax officer.
14. A notice was received from Income tax officer (TDS), Patiala Smt Kiran Bala on 09.01.2014.
15. Reminder to CGDA (Complaints Cell) issued vide letter No 1200/Gen/IT/25/EIP dated 16 Jan 2014.
16. Reminder to PCDA WC Chandigarh issued vide letter No 1200/Gen/IT/26/EIP dated 16 Jan 2014.
17. Interim reply submitted to Smt Kiran Bala, Income tax officer (TDS) vide letter No 1200/Gen/IT/28/EIP dated 16 Jan 2014 with reminder to PCDA WC Chandigarh alongwith letter of Income tax officer Smt Kiran Bala vide letter No 1200/Gen/IT/29/EIP dated 18 Jan 2014.
18. Rep of this HQ visited PCDA WC Chandigarh and met smt Smita Walia, AAO in connection with uploading of return vide letter No 1200/Gen/IT/31/EIP dated 23 Jan 2014.
19. Despite extended correspondence matter has been again brought to the notice of CGDA (Complaints Cell) Delhi vide letter No 1200/Gen/IT/32/EIP dated 21 Jan 2014 and reminder to PCDA WC Chandigarh vide letter No 1200/Gen/IT/34/EIP dated 27 Jan 2014.
20. Finally PCDA WC Chandigarh has provided the requisite information to upload the return for the year 2011-12 vide their letter No P/V/CHD/I-TAX dated 05 Mar 2014.
21. Accordingly Smt Kiran Bala, ITO (TDS) has been informed that return has been uploaded vide letter No 1200/Gen/IT/78/EIP dated 05 May 2014.
22. The reply to CGDA (Complaint Cell) Delhi has been given by PCDA WC Chandigarh that the required correction has been carried out vide their letter No P/V/CHD/ITAX dated 18 Mar 2014.

It was also pointed out that documents evidencing the same had also been annexed thereto .Ld.Counsel for the assessee therefore contended that the assessee had sufficiently demonstrated the existence of reasonable cause for the late deposit of TDS returns and the findings of the CIT(A) in this regard were therefore incorrect.It was contended that the penalty levied therefore ought to be deleted.

The Ld. DR on the other hand relied upon the order of the CIT(Appeals).

9. We have heard both the parties ,gone through the orders of the authorities below and also the documents referred to before us. The issue before us being levy of penalty u/s 272A(2)(k) of the Act,for late deposit of TDS returns, there is no dispute that no penalty is leviable if the assessee proves that there was a reasonable cause for the failure,as provided u/s 273B of the Act.

We find merit in the contentions of the Ld. counsel for assessee that the assessee had sufficiently demonstrated the existence of reasonable cause for the default. The Ld. counsel for assessee has contended that it was not required to deduct TDS earlier and was only intimated on 27.3.2012 to obtain TAN, DDO Registration No., DDO Code, etc. to facilitate TDS compliances. That it complied with the same, but in the absence of any specific order to deduct tax at source, refrained from doing so, presuming

that it was being continued to be done by PCDA(WC) and it was only when ITO-TDS, issued notice to it requiring it to file TDS return vide letter dated 9.1.2014 that they come to know of the default and hence the delay. Copies of all correspondence in this regard were also placed. No infirmity in these facts have been pointed out to us by the Revenue. It is therefore abundantly clear that the 'Person Responsible' had a bonafide reason for the delay in filing TDS returns. Being required to comply with the TDS requirements and compliances for the first time and that too not being specifically intimated to do so by the authority who was earlier doing it, the 'Person Responsible's belief that the authority was continuing to do so was a bonafide and reasonable belief. Therefore, the filing of TDS return later on, only on being required to do so by the ITO TDS, automatically resulted in delay on account of a reasonable cause. There is no merit in the contention of the CIT(Appeals) that the penalty was justified considering the huge period of delay. The assessee having duly explained the cause for the delay. "Person Responsible" cannot be held responsible for the delay nor can be said to have consciously disregarded the obligation cast upon him.

10. In view of the above, we hold that the assessee having shown reasonable cause for the delay in filing TDS

return, no penalty u/s 272A(2)(k) of the Act is leviable and the same is, therefore directed to be deleted.

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

Order pronounced in the Open Court.

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| Sd/- | Sd/- |
| **(SANJAY GARG)** | **(ANNAPURNA GUPTA)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Dated : 4th July, 2018

*Rati*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Assistant Registrar,
ITAT, Chandigarh