

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH, CUTTACK

श्री चन्द्र मोहन गर्ग, न्यायिक सदस्य एवं श्री एल.पी.साहु, लेखा सदस्य के समक्ष ।

**BEFORE SHRI CHANDRA MOHAN GARG, JM
AND**

SHRI L.P. SAHU, AM

आयकर अपील सं./ITA Nos.201 to 203/CTK/2018

(निर्धारण वर्ष / Assessment Years :2010-2011 to 2012-2013)

Shishu Ananta Mahavidyalaya, Balipatana, Khurda-752102	Vs.	JCIT(TDS), Bhubaneswar
TAN No. : BBNS00799 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by	:	Shri P.C.Mishra, AR
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR

सुनवाई की तारीख / Date of Hearing	:	01/08/2019
घोषणा की तारीख/Date of Pronouncement	:	06/08/2019

आदेश / O R D E R

Per L.P.Sahu, AM:

These three appeals have been filed by the assessee against the order of CIT(A)-3, Bhubaneswar, all dated 10.08.2015 for the assessment years 2010-2011 to 2012-2013.

2. As per the office note, there is a delay of 897 day in filing the above three appeals. The assessee has filed an application along with affidavit for condonation of delay stating therein that due to frequent change of the Management (Principal), the appeal could not be filed within the prescribed time. The assessee further submitted that the delay of 897 days in filing the above three appeals is not deliberate on the part of the assessee and prayed for condonation of delay. Ld. DR has no objection to

condone the delay. After hearing the submissions of the parties, we are satisfied that the assessee had a bonafide reason for not filing the above appeals in time. Therefore, we condone the delay of 897 days in filing the above three appeals and proceed to decide the appeals of the assessee on merits.

3. Since the issues involved in all the appeals are common arising out of identical set of facts, therefore, the same are heard altogether and are being disposed off by this consolidated order. For the sake of brevity, we shall take into consideration the facts mentioned in the appeal of the assessee for assessment year 2010-2011 in ITA No.201/CTK/2018 and the grounds mentioned therein for deciding all the three appeals.

4. The assessee in ITA No.201/CTK/2018 has raised the following grounds of appeal:

1. *That the assessee is an educational college name and style of Sishu Ananta Mahavidyalaya. Situated in a rural area at-Balipatna, in the District of Khurda, Orissa. The principal is the head of the institution. The order of Commissioner of Income tax (Appeal) was received by the-then principal, Mr. Sudhir Kumar Mohanty on 28/10/2015 and the said principal engaged one advocate Sri Prakash Kumar Nayak to conduct the case. That on 31/10/2015 the principal was retired from service because of which he could not intimate his successor regarding the order. That order was misplaced somewhere by the conducting advocate and not informed about the issue. When the college authorities received the attachment notices U/s.226(3) of the IT. Act, 1961 attaching the bank account of the college, the CIT(A)'s order were found after thorough search. In the meanwhile, four/five principal were transferred and joined. Therefore, the delay in filing appeal after two and half years of due date, is not deliberate. An affidavit is filed in support of delay in filing the appeal. Hence, the delay may kindly be condoned, and the case may kindly be heard.*
2. *For That the order of penalty U/s 272A(2)(k) passed by the learned Joint Commissioner of Income Tax (TDS), Bhubaneswar as well as the appeal order passed by the Learned Commissioner of income tax (Appeal), 3*

Bhubaneswar has neither been based on the facts and circumstances of the case and/or on the point of law.

3. *For that the Commissioner of Income tax (Appeal)-3, Bhubaneswar is not justified in confirming the order of penalty U/s.272A (2) (K) of the Income Tax Act, 1961 as there was reasonable cause U/S.273B of the Act.*
4. *For that the penalty imposed amounting to Rs.1,63,300/- U/s. 272A(2)(K) and confirmed by the Commissioner of Income Tax (Appeal)-3, Bhubaneswar is illegal, arbitrary and uncalled for in the fact and circumstances of the case.*
5. *For that the Ld. Commissioner of Income Tax (Appeal)-3, Bhubaneswar should have considered the submission of the Appellant that the default was not deliberate or wilful as the appellant depends on other agencies like contractual agent having computer knowledge and agencies like NSDL for uploading the TDS return after recent amendment of TDS rules in 2005 and the Income-tax laws are of very technical nature.*
6. *For that the Commissioner of Income Tax (Appeal)-3, Bhubaneswar should have considered that there was no revenue loss to the Department as all TDS amount was deposited in central Govt. Account in time except filing of TDS return.*
7. *For that the Commissioner of Income Tax (Appeal) -3, Bhubaneswar should have conceded that due to technical and venial breach supported by reasonable cause, quasi-criminal penalty is not leviable as the default being committed by predecessor deductor i.e. principle of the college is out of ignorance for the first time.*
8. *For that the Commissioner of Income Tax (Appeal)-3, BBSR should have sympathetically considered that Hon'ble jurisdictional High court and other several High courts and other ITAT Benches including Cuttack Bench of ITAT have held that a lenient view should be taken for the first-time default without having any experience regarding uploading of e-TDS return and penalties imposed were cancelled.*
9. *For that the Commissioner of Income Tax (Appeal)-3 Bhubaneswar, should have considered that the assessee-deductor is bonafide believer of tax compliance and the default is not deliberate or intentional and there is no malafide intention, fraud or willful neglect for e-filing TDS return and making loss of Govt, revenue.*
10. *That other ground, if any will be urged at the time of hearing.*

5. Brief facts of the case are that the assessee is running an educational institution named as "Sishu Ananta Mahavidyalaya". The assessee had deducted the TDS and deposited the same but he did not file TDS quarterly return for the 3rd & 4th in the appropriate form i.e. Form No.24(2) within the stipulated time, the details for the assessment year 2010-2011 are as under :-

Form Type	Quarter	Due Date DD/MM/YY	Date of Filing DD/MM/YY	• Delay in Days	Penalty Rs.100/- per day	Amount of TDS involved	Amount of Penalty (Col.VI or VII whichever is less)
1	II	III	IV	V	VI	VII	VIII
24Q	Qr.3	15.01.2010	13.12.2012	1063 days	106300	69000	69000
24Q	Qr.4	15.05.2010	13.12.2012	943 days	94300	1110724	94300
						Total	1,63,300

It was noticed by the JCIT(TDS) that the assessee is liable for penalty u/s.272A(2)(k) of the Income Tax Act, 1961 for failure to file TDS return within the time as specified in sub-section (3) of Section 200 or under the proviso to sub-section 3 of section 206C of the Act. Therefore, he is liable for penalty to the extent of TDS and he initiated penalty proceedings as per the above referred section and issued notice dated 14.01.2013. The case was fixed for hearing and assessee filed its reply which the AO has incorporated in the assessment order at page 2, as under :-

".....the delay in filing e-TDS return on our part was due to our inability to access he required data and information and for our ignorance of the e-mail procedures. The dealing-Assistant, not being computer-savvy, failed to file the e-TDS within the stipulated period.

....that we have already filed e-TDS for financial year 2009-10, quarterly TDS for three quarters of 2010-11 and quarterly e-TDS of 2012-13.

I, therefore, request your kind self to be compassionate and give us 10 days time for filing e-TDS for 2010-11 (last quarter) and 2011-12."

The case was again fixed on 03.07.2013. In response to this Sri P.C. Nayak, Advocate and A/R of the assessee appeared and stated as follows:

"..... The copies of all the Quarterly statements of TDS with the above challan are once again produced for your kind perusal and record. The delay of filling of the above returns by the assessee neither deliberate nor intentional."

The JCIT(TDS) did not convince with the reply submitted by the assessee and accordingly, the JCIT(TDS) imposed penalty u/s.272A(2)(k) of the Act of Rs.1,63,300/-. Against which the assessee appealed to the CIT(A) and submitted that there was a reasonable cause for not filing of TDS quarterly return. The CIT(A) after considering the submissions of the assessee and findings of the JCIT(TDS), dismissed the appeal of the assessee.

6. Now, the assessee is in further appeal against the order of CIT(A) before the Income Tax Appellate Tribunal.

7. Ld. AR reiterated the submissions made before the lower authorities and submitted that the default was not deliberate or willful as the assessee depends on other agencies like contractual agent having computer knowledge and agencies like NSDL for uploading the TDS return after recent amendment of TDS rules in 2005 and the Income-tax laws are of very technical nature. Ld. AR further submitted that the authorities below should have considered that there was no revenue loss to the Department as all TDS amount was deposited in central Govt. Account in time except filing of TDS return. Therefore, the Id. AR prayed

for deleting the penalty. Ld. AR to support his contention, has relied on the following decisions :-

- i) CIT(TDS)-I Vs. State Bank of Patiala, (P&H-HC) 2016 ITL 1326; and
- ii) Punjab National Bank Vs. JCIT(TDS) (Chandigarh-ITAT) 2016 ITL 3247

8. On the other hand, Id. DR relied on the orders of authorities below and submitted that the assessee has not complied the filing of TDS quarterly return as per the provisions of Income Tax Act, therefore, the assessee is specifically liable for penalty. The CIT(A) has interpreted in details to the reasonable cause under which the assessee can get immunity u/s.273B of the Act and such case are not with the assessee. Therefore, the order of lower authorities should be restored and the case law cited by the assessee are not applicable in the present facts of the case.

9. After hearing both the sides and perusing the entire materials available on record, it is not disputed that the assessee has deducted TDS and deposited the TDS well within the time through Govt. treasury. Therefore, assessee's failure only on the technical basis for not filing the quarterly TDS return. We also find that there was reasonable cause with the assessee because the then Principal was retired and new Principal appointed and subsequently three-four principals have also been changed and, therefore, explained the reasonable cause. Our view is also supported by the decision of coordinate bench of the Tribunal in the case of Punjab National Bank, 2016 ITL 3247 (Chandigarh ITAT), wherein the observations of the Tribunal are as under:-

“6. Considering the material on record and above discussion, we are of the view that since levy of penalty is not mandatory in each and every case and depends upon facts of the case, therefore, considering explanation of the assessee in the light of above order in the case of Bank of Bikaner & Jaipur (supra) and reasonable cause in favour of assessee, we set aside the orders of authorities below and cancel the penalty.”

10. On the foregoing discussion, we are of the view that penalty is not leviable in the facts and circumstances of the case. It is not in dispute that assessee deducted TDS and paid to the Department. Therefore, there is no loss caused to the Revenue Department. The penalty is imposed against assessee because the TDS quarterly return was not filed within time. The assessee explained the reasonable cause for delay. Therefore, there appears reasonable cause in favour of the assessee for failure to file TDS quarterly return within time. Accordingly, respectfully following the decision of the coordinate bench of the Tribunal, cited above, and considering reasonable cause explained by the assessee, we set aside the orders of lower authorities and delete the penalty levied u/s.272A(2)(k) of the Act. Appeal of the assessee for A.Y.2010-2011 is allowed.

11. The grounds raised in ITA Nos.202 & 203/CTK/2018 by the assessee for the assessment years 2011-2012 & 2012-2013 are identical to the grounds decided by us in the case of appeal of the assessee for the assessment year 2010-2011 in ITA No.201/CTK/2018, wherein we have allowed the appeal of the assessee and deleted the penalty levied u/s.272A(2)(k) of the Act. Since, the present appeals being identical to ITA No.201/CTK/2018, therefore, our observations made in the above appeal shall apply *mutatis mutandis* to the grounds raised in appeal i.e.

ITA Nos.202 & 203/CTK/2018 for the assessment years 2011-2012 & 2012-2013. Accordingly, we allow this appeal of the assessee and delete the penalty levied u/s.272A(2)(k) of the Act. Thus, both appeals of the assessee are allowed.

12. In the result, all the three appeals of assessee are allowed.

Order pronounced in the open court on 06/08/2019.

Sd/-
(C.M.GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(L.P.SAHU)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 06/08/2019

प्र.कु.मि/PKM, Sr.P.S.

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

1. अपीलार्थी / The Appellant- .
Shishu Ananta Mahavidyalaya, Balipatana,
Khurda-752102
2. प्रत्यर्थी / The Respondent-
JCIT(TDS), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack