

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, 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.591/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Star Quenchers Spirit P. Ltd.,
Flat No.5, Sukhakarta Sankul,
Garkheda, Aurangabad-431001.

TAN : NSKSI2333G

.....अपीलार्थी / Appellant

बनाम / V/s.

JCIT, TDS Range,
Nahik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri S. N. Puranik
Revenue by : Mrs. Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 28.08.2019
घोषणा की तारीख / Date of Pronouncement : 30.08.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the assessee against the order of CIT(A)-1,
Aurangabad dated 02.12.2016 for the Assessment Year 2011-12.

2. The grounds raised by the assessee are as under :-

"1. Commissioner of Income Tax Appeals has erred in confirming the Penalty u/s 272A(2)(k) r.w.s. 200(3) of Rs. 1,09,304/- same may please be deleted.

2. CIT(A) has erred in not cancelling the penalty order by CIT, as said order is without prejudice and sufficient opportunity u/s 274, hence bad in law.

3. Appellant prays for just and equitable relief.

4. *Appellant prays to add, alter, amend, clarify, modify, take Additional Ground/s and/or withdraw the Ground/s during Appellate Proceeding.”*

3. Before us, at the outset, ld. Counsel for the assessee submitted that this is a case where the assessee filed the TDS return late for all the quarters with the meaningful delay of 163 days only. Otherwise, the Assessing Officer levied the penalty of Rs.1,09,304/- u/s 272A(2)(k) of the Act and the delay quantified is also different. In this regard, ld. Counsel furnished written submission narrating the facts and giving the reasons for the said delay. Further, ld. Counsel for the assessee submitted that considering the date of remitting of the tax to the Government Account, the penalty leviable by the Assessing Officer should be in the range of Rs.16,300/- (delay of 163 days only) and not the delay and amount of penalty as quantified by the Assessing Officer and the CIT(A). Further, ld. Counsel mentioned that this matter can be verified again by the CIT(A) and the issue can be remanded to the file of the CIT(A). Further, ld. Counsel for the assessee filed a copy of the decision of the Co-ordinate Bench of the Tribunal in the case of Nav Maharashtra Vidyalaya vide ITA No.832/PN/2016 and others, order dated 07.10.2016 in support of his case, copy of which is placed on record.

4. On the other hand, ld. DR for the Revenue relied heavily on the order of the revenue authorities.

5. On hearing both the sides, ongoing through the written submission of the assessee, perusing the calculating sheet furnished by the assessee before us and also the decision of the Tribunal in the case of Nav Maharashtra Vidyalaya and others (supra), we find it is relevant to remand the issue to the file of the CIT(A) to consider the ratio laid down in the decision of the Tribunal in the case of Nav Maharashtra Vidyalaya and others (supra). We find the contents of para 28 of the said order of the Tribunal (supra) is relevant in this regard and the same are extracted hereunder :-

*“28. We hold so. In this bunch of appeals, there are cases where the assessee has defaulted in **not depositing tax deducted at source in time**, in such cases, the returns were delayed because of default on behalf of the deductor. In such cases, penalty under section 272A(2)(k) of the Act is leviable. However, the same is to be **restricted from the date of payment of TDS to the date of filing e-TDS statements** since e-TDS statements cannot be filed without payment of TDS to the credit of Central Government. Similar ratio has been laid down by the Chandigarh Bench of Tribunal in M/s. Ashirwad Complex Vs. JCIT (TDS) (supra). Accordingly, we hold so.”*

6. The event of remitting to Government proceeds the event of filing of eTDS statements. Considering the above, we find the CIT(A) may grant opportunity to the assessee for explanation and justification of the delay of 163 days. Accordingly, we remit back all the issues to the file of the CIT(A) for fresh adjudication. It is hereby directed that the CIT(A) shall pass a speaking order after granting reasonable opportunity of being heard to the assessee. Thus, the grounds raised by the assessee are allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 30th day of August, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 30th August, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Aurangabad.
4. The CIT-TDS, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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