

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI GEORGE MATHAN, JM AND  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं / ITA No.2466/PUN/2017

निर्धारण वर्ष / Assessment year : 2011-12

M/s. Setu Ahmednagar,  
Collector Office, GPO Road,  
Ahmednagar – 414001.

..... अपीलार्थी /  
Appellant

PAN : PNES22533A.

बनाम v/s

The Addl. Commissioner of Income Tax  
(TDS), Pune Satara Road,  
Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Hari Krishan.

Revenue by : Shri Deepak Garg.

सुनवाई की तारीख / Date of Hearing : 21.02.2020	घोषणा की तारीख / Date of Pronouncement: 21.02.2020
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आदेश / ORDER

**PER ANIL CHATURVEDI, AM :**

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A), Pune – 10 dated 09.08.2017 for the assessment year 2011-12.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Society and stated to be Tax Deductor having TAN No.PNES22533A. It was noticed that assessee had filed return of TDS u/s 200(3) of the Act in Form No.26Q for the 1<sup>st</sup> quarter of Financial

Year 2010-11 on 29.07.2011 as against the statutory date being 15.07.2010 resulting into delay of 379 days in filing the return of TDS. AO noted that assessee has not established any reasonable cause for delay in filing e-TDS return in Form-26 for 1<sup>st</sup> quarter of F.Y. 2010-11. He therefore held that assessee to be liable for penalty for delay in filing the TDS return. He accordingly, vide order dt.09.08.2017 passed u/s 272A(2)(k) / 274 r.w.s. 200(3) of the Act, calculated penalty @ Rs.100/- per day for the delay of 379 days and levied penalty of Rs.37,900/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide ex-parte order dt.09.08.2017 (in appeal PN/CIT(A)10/Addl.CIT(TDS)/ 254/14-15) upheld the levy of penalty. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

*“1. On the facts and circumstances of the case and in law the order passed by the Ld. Commissioner of Income Tax (Appeals), dismissing the appeal of the assessee ex-parte, is bad in law and ab-initio-void because the order has been passed in violation of principles of nature justice, without giving adequate opportunity of being heard to the assessee.*

*2. The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the assessee had no intention to violate the law. Due amount of tax was deducted as source. It was paid to the credit of the government in time. Only the quarterly return of tax deducted at source in Form No. 26Q was not filed within time. In this regard we rely upon the judgement of the Hon'ble income Tax Appellate Tribunal (Delhi)(S.MC) in the case of Mehendra Prakash Sarraf, 64 ITD 382 (Delhi).*

*3. The Ld. Commissioner of Income Tax (Appeals) has failed to appreciate that the assessee was prevented by sufficient cause from filing the quarterly return within the stipulated period.*

3. All the grounds being inter-connected are considered together.

4. Before us, Ld.A.R. at the outset submitted that Ld.CIT(A) has passed an ex-parte order and not on merits. Ld.A.R. further submitted that AO did not consider the submissions made by the assessee and that before Ld.CIT(A) assessee could not appear due to unavoidable reasons. Ld.A.R. further submitted that if given a chance, assessee undertakes that it will appear before Ld.CIT(A) and will produce all the evidence to substantiate its case. He therefore submitted that assessee be granted one more opportunity to explain its stand. Ld. D.R. on the other hand supported the order of AO and objected the Ld.A.R.'s prayer for second innings.

5. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 272(2)(k) / 274 r.w.s. 200(3) of the Act of delay in filing of e-TDS return for 1<sup>st</sup> quarter of F.Y. 2010-11. The perusal of order of CIT(A) reveals that Ld.CIT(A) has passed an ex-parte order only on the basis of material available on record. In view of the well settled principle of natural justice that sufficient opportunity of hearing should be afforded to the parties and no party should be condemned unheard and in view of the undertaking given by assessee that it will appear before the Ld.CIT(A) as called for, we are of the view that one more opportunity be granted to the assessee to present its case before the lower authorities. We therefore restore the matter back to the file of Ld.CIT(A) to decide the issue on merits in accordance with law. Needless to state that Ld.CIT(A) shall grant adequate opportunity of hearing to both the parties. In view of our decision to restore the issue to Ld.CIT(A), we are not adjudicating on merits the grounds of the

appeal raised by the assessee. **Thus, the grounds of assessee are allowed for statistical purposes.**

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

Order pronounced on 21<sup>st</sup> day of February, 2020.

**Sd/-**  
**(GEORGE MATHAN)**  
न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 21<sup>st</sup> February, 2020.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-10, Pune.
4. CIT(TDS), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR,  
ITAT, "बी" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.