



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.5018/Mum./2018  
(Assessment Year : 2009-10)

Yash Corporation  
C/o Rajesh Agarwal, C.A.  
509, Swami Samarth Complex  
Nr. Laxmi Bhavan Chowk  
Gokulpeth, Nagpur 440 010  
PAN – ABLFS8016Q

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
TDS Range, Thane

..... Respondent

Assessee by : None  
Revenue by : Shri V. Vinod Kumar

Date of Hearing – 05.10.2020

Date of Order – 08.10.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 15<sup>th</sup> June 2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Thane, confirming penalty imposed of ₹94,218 under section 272A(2)(k) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2009-10.

2. There is a delay of 15 days in filing the present appeal. The assessee has filed an affidavit explaining the reason for delay. After perusing the averments made in the affidavit, we are of the view that the delay in filing the appeal is due to reasonable cause. Accordingly, condoning the delay we admit the appeal for adjudication on merit.

3. Brief facts are, the assessee being a deductor of tax at source for different quarters of financial year 2008–09, was required to file statement of tax deducted at source (TDS) in terms of section 200(3) of the Act. Undisputedly, though, the assessee furnished such TDS statement, however, they were filed belatedly. Therefore, the Assessing Officer initiated proceedings for imposition of penalty under section 272A(2)(i) of the Act and ultimately passed an order under the said provision imposing penalty of ₹ 94,218 for different quarters of financial year 2008–09. The assessee challenged the penalty order so passed by filing an appeal before the first appellate authority. However, by impugned order, learned Commissioner (Appeals) confirmed the penalty imposed by the Assessing Officer.

4. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after

hearing the learned Departmental Representative and on the basis of material available on record.

5. We have heard the learned Departmental Representative and perused the material on record. Undisputedly, learned Commissioner (Appeals) has disposed off the appeal filed by the assessee ex-parte. On a perusal of the impugned order passed by learned Commissioner (Appeals) it is very much clear that on the first date of hearing i.e., on 20<sup>th</sup> April 2018, since the assessee did not appear or sought any adjournment, learned Commissioner (Appeals) adjourned the appeal to 13<sup>th</sup> June 2018. As on 13<sup>th</sup> June 2018 again no one appeared for the assessee, learned Commissioner (Appeals) proceeded to dispose off the appeal ex-parte and sustained the penalty imposed by the Assessing Officer. From the aforesaid facts, it is very much clear that adequate opportunity of being heard was not provided by learned Commissioner (Appeals). Only, on the second date of hearing he has disposed off the appeal ex-parte without providing any further chance to the assessee. In our considered opinion, proper opportunity of hearing should have been provided to the assessee before deciding the appeal ex-parte. That having not been done by learned Commissioner (Appeals), we are inclined to set aside the impugned order passed by learned Commissioner (Appeals) and restore the issue back to his file for fresh adjudication after due and proper opportunity of being heard

to the assessee. Further, we direct the assessee to make timely compliance to the notice of hearing to be issued by learned Commissioner (Appeals). With the aforesaid observations, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 08.10.2020

**Sd/-  
N.K. PRADHAN  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED:**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai