

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं / ITA No.1098/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

M/s. Parvar Enterprises,
C/o. Khandelwal Jain & Associates,
1st Floor, Alankar Cinema Building,
Above United Bank, Pune – 411 001.
PAN : AADFP5200C.

..... अपीलार्थी /
Appellant

बनाम v/s

Addl. Commissioner of Income Tax (TDS),
Range, Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri R.G. Nahar.

Revenue by : Shri Achal Sharma.

सुनवाई की तारीख / Date of Hearing : 11.06.2018	घोषणा की तारीख / Date of Pronouncement: 20.06.2018
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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, Pune – 10, Pune dt.26.02.2016 passed u/s 272A(2)(k) / 274 r.w.s. 200(3) of the Income Tax Act for the assessment year 2011-12.

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

Assessee is a partnership firm stated to be carrying out the business of erecting, commissioning work and job work. It filed its return of TDS u/s 200(3) in Form No.26Q for the first quarter of

Financial Year 2010-11 on 13.09.2011 as against the statutory date being 15.07.2010 resulting into delay in filing the return of income of 425 days. AO accordingly considered the assessee to be in default and thereafter vide order dt.27.02.2013 passed order u/s 272A(2)(k) / 274 r.w.s. 200(3) of the Act levied penalty of Rs.42,600/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.26.02.2016 (in appeal No.PN/CIT(A)10/Addl.CIT(TDS)/263/14-15) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before us and has raised the following ground :

“On facts and circumstances prevailing in the case and as per the provisions & scheme of the Act it be held that, as per provisions & scheme of the Act it be held, the penalty imposed u/s 272A(2)(K)/ 274 r.w.s. 200(3) of the Income Tax Act is not in accordance with the provisions of the Act & the same has been imposed without fulfilling the basic principles of levy of penalty. The penalty so imposed be cancelled. Just in proper relief may be granted to the appellant.”

.3 Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and further submitted that assessee was not having any qualified C.A. to look after the filing matters and further the Managing Partner of the assessee was mostly out of City due to medical reasons. He further submitted that though there was delay in filing of e-TDS but the liability of TDS was deposited with the Government Treasury along with interest. He further submitted that the challan of TDS payment was not reflected in NSDL website which was a pre-requisite to uphold the TDS return. Later on, follow up with the Bank, it was noticed that due to the mistake of Bank Officials, the amount paid towards TDS was wrongly credited as advance tax and was reflected in NSDL website as advanced tax. The rectification of the mistake took long time and therefore the return was uploaded belatedly. He therefore submitted that there

was a reasonable cause for delay in filing the return and the same be condoned. He also relied on the decision of Pune Tribunal in the case of Nav Maharashtra Vidyalaya Vs. Addl.CIT (TDS) reported in (2016) 74 Taxmann.com 240. He therefore submitted that the penalty be deleted. Ld.D.R. on the other hand, supported the order of lower authorities.

4. 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 272A(2)(k) / 274 r.w.s. 200(3) of the Act. Before us, it is assessee's submission that the challan of TDS payment was not reflected on NSDL website and due to the error on the part of the Bank, the amount was wrongly credited as advance tax and its rectification took long time. Further reflection of challan in the NSDL website was a prerequisite to upload the TDS return. It is also assessee's submission that the TDS was paid in Government treasury along with interest and that there is no loss of revenue. The aforesaid contentions of the assessee have not been controverted by Revenue. We, therefore, are of the view that assessee has established and proved that it had a reasonable cause for delay in filing the return of TDS. We find that the Co-ordinate Bench of the Tribunal in the case of Nav Maharashtra Vidyalaya (supra) has held that Sec.273B covers the cases of levy of penalty u/s 272A(2) and therefore in case a person establishes the case of reasonable cause for not complying with the provisions of said section, then such person shall not be liable for penalty imposable for failure u/s 272A(2) of the Act. In view of the aforesaid decision of Pune ITAT, we are of the view that in the present case there was

a reasonable cause on the part of assessee resulting into the delay in filing the return of TDS and therefore the assessee is not liable for penalty. We therefore direct its deletion. **Thus, the appeal of the assessee is allowed.**

5. **In the result, the appeal of the assessee is allowed.**

Order pronounced on 20th day of June, 2018.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 20th June, 2018.

Yamini

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

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

आदेशानुसार/ BY ORDER,

// True Copy //

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