

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

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.4503/Mum/2019
(Assessment Year :2012-13)**

M/s. Gurushish Construction Pvt. Ltd., 3 rd Floor, HDIL Towers Anant Kanekar Marg Bandra (E) Mumbai – 400 051	Vs.	Joint Commissioner of Income Tax TDS-1(2), Mumbai 6 th Floor, Smt. K.G.Mittal Ayurvedic Hospital Charni Road Mumbai – 400 002
PAN/GIR No.AABCG4633R		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri T.S.Khalsa
Date of Hearing	07/06/2021
Date of Pronouncement	11/06/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.4503/Mum/2019 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-59, Mumbai in appeal No.CIT(A)-59/IT-65/2016-17 dated 25/04/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.272A(2)(k) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the levy of penalty in the sum of Rs.500,700/- u/s. 272A(2)(k) of the Act in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard Id. DR and perused the materials available on record. We find that in this case, the Id. AO observed that assessee had failed to file TDS statements as required u/s.200(3) of the Act within the prescribed time. The delay in filing the statements are as under:-

Sr. No.	Quarter	Type	Due date of Filing	Actual date of filing	Delay in number of days
1	26Q	Other than salary	15/07/2011	09/01/2015	1273
2	26Q	Other than salary	15/10/2011	04/04/2015	1176
3	26Q	Other than salary	15/01/2012	28/05/2015	1228
4	26Q	Other than salary	15/05/2012	05/01/2016	1330
				Total	5007

3.1. For the aforesaid delay, the Id. AO proceeded to levy penalty @100/- per day in terms of Section 272A(2)(k) of the Act and accordingly, arrived at the penalty amount of Rs.500,700/-. This levy of penalty was upheld by the Id. CIT(A) on the ground that assessee had not offered any reasonable cause for delay in filing of TDS statements u/s. 200(3) of the Act.

3.2. We find that assessee is engaged in the business of real estate development. A survey action u/s.133A of the Act was conducted in its premises on 10/02/2014, pursuant to which, the TDS defaults to the tune

of Rs.2,31,71,365/- was detected leading to the commencement of proceedings u/s.201(1) / 201(1A) of the Act. The assessee had submitted that it had not claimed any tax deduction of expenditure on which TDS default had occurred. It had also submitted that the majority of said default related to interest payments made to an entity identified as IL & FS which had already accounted for the said interest receipts in its return. The assessee also stated that it had paid the balance amount of tax in default amounting to Rs.70,27,550/- prior to the date of commencement of the present penalty proceedings. The assessee submitted that since the tax deducted was not paid in time, the TDS statements could not be filed electronically. According to assessee, the same constituted reasonable cause within the meaning of section 273B of the Act and hence there cannot be any levy of penalty u/s. 272A(2)(k) on it. Admittedly, we find that assessee had duly deducted the tax at source and had also remitted the same, of course with some delay, for which it had already been penalised with interest as per the Act. The interest u/s. 201(1A) of the Act had also been paid by the assessee. Admittedly, the assessee had indeed filed its TDS statements u/s.200(3) of the Act beyond prescribed time. But we find that there is absolutely no loss to the exchequer pursuant to the said delay as the entire taxes that were due to the Government had already been duly remitted by the assessee. Hence, the default committed by the assessee is only a minor technical and venial breach. It is settled law that no penalty could be levied on an assessee for a mere technical venial breach, more especially when there is no loss caused to the exchequer due to such breach.

3.3. In view of the same, we have no hesitation in directing the Id. AO to delete the penalty levied u/s. 272A(2)(k) in the facts and circumstances

of the instant case. Accordingly, the grounds raised by the assessee are allowed.

4. In the result, appeal of the assessee is allowed.

Order pronounced on 11/06/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 11/06/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai