

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

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI S. RIFAUR RAHMAN (ACCOUNTANT MEMBER)**

**ITA No. 4240/MUM/2018
Assessment Year: 2009-10**

Mr. Sable Yashwant Laxman,
Sable Appartments, Shantinagar,
Next to Hotel Maharaja, Old
Mumbai, Khopoli-410 203.

PAN No. PNES 09546 F

Appellant

Vs. Addl. CIT- TDS Range,
Thane.

Respondent

Assessee by : Mr. Viraj Mehta, AR
Revenue by : Mr. Yashwant Bhaskar, DR

Date of Hearing : 30/08/2021
Date of pronouncement : 12/11/2021

ORDER

PER S. RIFAUR RAHMAN, A.M.

The present appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Pune [in short 'CIT(A)'] for the assessment year 2009-10 dated 11.12.2017 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Brief facts of the case are that the assessee did not file its quarterly TDS returns within the prescribed time limit and there was a delay in filing quarterly statement of TDS u/s 200(3) as provided under Rule 31A of the Income Tax Rules as under :

S. No.	Form No.	Qtrr.	FY	RRR No.	Due Date	Date of Filing	Delay	Tax Amount deduction (in ₹)	Max. penalty leviable (in ₹)
1.	26Q	Q1	2008-09	74090200005555	15.07.08	05.02.11	935	264918	93500
	26Q	Q2	2008-09	74090200005566	15.10.08	05.02.11	843	9373	9373
	26Q	Q3	2008-09	74090200005570	15.01.09	05.02.11	751	6234	6234
	26Q	Q4	2008-09	74090200005581	15.06.09	05.02.11	600	74152	60000
								Total	169107

3. As per the above chart, the penalty was levied based on the order of Addl. CIT(TDS) that the assessee paid the tax deducted during survey conducted on 04.02.2009 to finalize the TDS liability. The show cause notice was issued to the assessee and after considering the reply filed by the assessee, the Addl. CIT(TDS) levied penalty u/s 272A(2)(k) of the Income Tax Act, 1961 (in short Act). With the above observation that the reason given by the assessee were general and there was no reasonable cause for delay.

4. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)-2, Pune, after considering the submissions of the assessee, the Ld. CIT(A) sustained the penalty levied by the Addl. CIT(TDS) with the following observation :

“5.7 In view of aforesaid discussion on the facts of the case, provision and decisions cited, I hold that it is necessary for the deductor to file e-TDS statements in time so as to enable the processing of the returns in time. The Assessing Authority has also emphasised this aspect in his order. It is emphasized that filing of -TDS statements not only increases the reach of the department but also leads to creation of an audit trail that can be utilized as an effective tool against detection of tax evasion. It is for this reason that stringent action is required to be taken for non-compliance. In such circumstances, it cannot also be urged by learned counsel for the appellant that no penalty could have been imposed for non-filing of the e-TDS statements in time as it has not resulted in any loss to the revenue. The appellant has also not been able to make any case for reasonable cause and the reasons given are general. In fact, in view of malafide intention on the part of the appellant as per the facts mentioned in the preceding paragraphs, the appellant does not

deserve any mercy. I accordingly hold that penalty u/s 272A(2)(k) has been rightly levied by the Assessing Officer and therefore I do not find any reason to interfere with the order passed by the Addl. CIT (TDS) in levying penalty of Rs. 1,69,107/- and his order is therefore confirmed."

5. Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal :

- 1. The Ld. CIT(A) erred in confirming the action of Ld. AO by confirming penalty u/s 272A(2)(k) of ₹1,69,107/-. Such levy of penalty is bad in law and liable to be deleted.*
- 2. The Ld. CIT(A) erred in confirming the action of Ld. AO by confirming penalty u/s 272A(2)(k) without providing proper opportunity of hearing and thereby proper opportunity be given.*

6. At the time of hearing the Ld. AR of the assessee placed before us following arguments :

- 1. Appeal has been filed against penalty levied u/s 272A(2)(k) due to late filing of TDS returns, which was beyond the control of the appellant.*
- 2. Appellant being individual is into business as a Mining Contractor and trading of Iron Ore. Business operations are carried out in Karnataka State. However, it may be noted that accounts are maintained at his registered address in Maharashtra.*
- 3. Penalty levied be deleted on following reasons:-*

Reasonable Cause - I - Discharge of TDS Liability and No details available with appellant

- 4. During F.Y. 2008-09, there was a survey conducted on 04.02.2009 W/s 133A for TDS purpose. At the time of survey, assessee paid a sum of Rs. 1,09,915/- as directed by the Department.*
- 5. During the survey, appellant had paid such TDS on Expenses which were liable for deduction of TDS on the instruction of Department. However, such amount was paid*

on the instruction of the department and therefore, appellant was not having both TDS challans and party-wise details to file quarterly TDS returns.

6. *It is submitted that the above TDS was paid through Department directly. Challans which was received by appellant are enclosed herewith for your reference. It can be seen that TDS has been paid by Cash. Hence, appellant has no clue on which basis such liability has been determined and further, against which parties TDS has been deducted.*

Reasonable Cause - II-Bonafide belief that TDS compliances have been made

7. *Since, department has itself directed and finalized the TDS liability of Rs. 1,09915/-, appellant was under bonafide belief that all TDS liability are paid off and there no further compliances to be made Reasonable Cause - Ill- Practical difficulties in collecting PAN & Details.*
8. *Please note that, the Appellant was having business at Hospet in Karnataka State and accounts office was in Maharashtra state, due to which the collecting of Accounting data details and information, PAN details, etc., were not available and also non availability of technical expert computer staff at the remote area far from city.*
9. *The Appellant has no email online facility with his bankers being proprietor and accounting staff not technical compatible and also situated at remote area from the city.*

Reasonable Cause -IV TDS Return without Copy of TDS Paid Challan

10. *Since, the Department has not given copy of TDS paid Challan to the Appellant, the filing of TDS return was beyond the control of the Asseessee.*
11. *The Appellant has not received any copies of TDS paid Challan from the Department till the filing of Income Tax Return with Tax Audit Report on 30-09-2009 and hence the Tax Auditor has dis-allowed the amount of same Expenditure, against which the Department has already collected the TDS amount, wrongly as per section 40a(ia) of the Income Tax Act, 1961.*

12. The above Fact is also evident from the application made by the Appellant ws154 of the the Income Tax Act, 1961 for such wrong dis-allowance and reflection of the correct fact. [copy attached].

13. Please also further note that, the Appellant has paid Interest also on the delayed payment of TDS and also paid very high Income Tax on the dis-allowance of the Expenditure and further has also paid the TDS twice on February,2011.

Reasonable Cause - V - Double TDS paid on same amount

14. It may be noted that once it came to appellant's knowledge that IDS returns need to be filed and since it was not having the details of Rs. 1,09,915/- paid appellant once again paid TDS including interest of Rs. 2,44,762 on 02.02.2011 as per the instruction of its Chartered Accountant. Challans are enclosed herewith for your reference.

15. Therefore, appellant paid IDS TWICE on the same amount. In a way, appellant has therefore paid penalty also. Also, no refund has been seeked by appellant on the double/twice amount paid

Reasonable Cause -VI- Financial Hardship and Loss of Health

16. Appellants business was badly affected and Turnover fell from Rs. 76.16 crs to Rs. 11.30 crs. Infact, it had suffered loss during the impugned year.

17. Some of the parties has not only started pressuring for dues outstanding but has initiated recovery proceedings against the appellant in Court.

18. Further, appellant's bank a/c was also fridged and loan facility was stopped by bank.

19. Due to acute financial problem and non-corporation from bankers, appellant's health was also badly affected.

20. Appellant is a heavy diabetic and asthmatic patient with BP problem and on insulin Appellant has not only fallen ill but was also hospitalized in or around February 2009.

Reasonable Cause -VI - Prosecution Dropped

21. It may be noted that the prosecution proceedings launched by the department against the appellant was also dropped on account of the forgoing facts and difficulties being reasonable cause.

Reliance is placed on following case laws:-

A. S. 272A : Penalty - Failure to answer questions - Sign statements – Furnish information - Reasonable cause - Levy of penalty was held to be not justified. [S. 272A(2)(e), 272(2) (k)]

Allowing the appeal, the Tribunal held that; delay in filing TDS returns cannot be levied if the delay was caused due to requirement to collect PAN of payees. The non-availability of the PAN of the payees is a reasonable cause. The delay is unintentional and it causes no loss to the revenue as the TDS has been deducted and deposited in the treasury. Wrong levy of penalty ws272.A (2) (k) (failure to deliver TDS certificate) instead of u/s 272 A(2) (c) (delay in filing TDSreturns) shows that AO is not clear of the charge and vitiates the penalty proceedings. (ITA No.52Z/JP/2016, dt. 24.05.2017) (AY. 2011-12)

Argus Golden Trade India Ltd. v JCIT (Jaipur) (Trib), www.itatonline.org

B. S. 272A : Penalty -Delay in filing e. -TDS return -Reasonable cause -Levy of penalty was held to be not justified. [S. 272(2) (k), 273B]

Allowing the appeal of the assessee, the Tribunal held that, delay in filing quarterly return was due to non-availability of expert staff, who were aware of intricacies of filing e-returns. Tribunal also held that provisions of section 273B cover default committed under section 272./A(2)(k). (AY. 2011-12)

Nav Maharashtra Vidyalaya. v. (2016) 161 ITD 732/ 182 TTJ 729 (Pune) (Trib.)

C. S.272A(2) (k) : Penalty-Non-filing of TDS returns-Penalty technical in nature as TDS deposited within due date as the delay in filing is revenue neutral, levy of penalty was not justified. [S.200(3)]

ITAT held that assessee had duly complied with the statutory requirement of deducting and depositing the tax due on or before the due date but was prevented by sufficient cause in not filing the return of TDS within the time specified w's 200(3). Penalty is merely technical in nature and no loss was caused to the Revenue Department. It noted that levy of penalty is not mandatory in each and every case and depends upon facts of the case. Considering explanation of the assessee, the ITAT held that there was reasonable cause in favour of assessee for non-filing of TDS return. Hence, the penalty order was set aside.

(AY. 2008-2009)

Punjab National Bank v. JCIT (TDS)(2016) 48 ITR 8 (Chd.) (Trib.)

D.S. 272A(2) (k):Penalty-Deduction of tax at source-Delay in filing return of tax deduction at source-Assessee not aware that return to be filed at branch level-Reasonable cause-No loss of revenue on account of late filing of return-Penalty to be deleted [S. 273B]

The person responsible to file quarterly tax deduction at source return for the assessee failed to file it by due date. The Assessing Officer levied penalty under section 272/A(2) (k) of the Income-tax Act, 1961. The Commissioner (Appeals) confirmed this. On appeal Held, allowing the appeal, that according to section 273B of the Act, if reasonable cause for the failure to file the return of tax deducted at source was proved, penalty was not imposable. In the assessee's case, the assessee explained that it was not aware of the fact that a return was to be filed at the branch level. Thus there was reasonable cause for failure to comply with the requirement. The tax was deducted on time and paid to the Department and the necessary return was also filed. Therefore, no loss of revenue had occurred on account of late filing of the return. Thus, the penalty was merely technical in nature and since levy of penalty was not mandatory, depending upon the facts of the case, the penalty was to be deleted. (AY. 2011-2012)

State Bank of Bikaner and Jaipur v. Add. CIT (2015) 38 ITR 535 / 169 TTJ 29 (Chd.) (Trib.)

Therefore, humble request is made before your honours to drop the penalty proceedings as there exists reasonable cause for not filing TDS returns on time since delay is

unintentional and caused no loss to revenue as TDS has been paid ; in fact twice on same Amount.”

7. On the other hand, the Ld. DR relied on the orders passed by the Ld. CIT(A).

8. Considered the rival submissions and material on record. We noticed that the assessee paid the TDS payable subsequent to the survey conducted by the Department. The assessee complied with the directions of the Department but failed to file the relevant TDS quarterly returns due to non-availability of party wise details. It was submitted that TDS was paid through Department directly by cash (Ref. of 6 of P/B) through SBI challan. It is also submitted that the assessee has no clue on which basis such liability was determined. It is mistake on the part of the assessee to comply without understanding the liability.

8.1 It is also brought to our notice that the assessee paid the same amount along with interest on 02.02.2011 as per the instruction of Chartered Accountant. It is also brought to our notice that the assessee suffered financial and health hardship due to various reasons and the Department also dropped the prosecution proceedings considering the above difficulties being reasonable cause.

8.2 The imposition of penalty u/s 272A falls u/s 273B, as per which no penalty shall be imposable for any failure if the assessee proves that there was reasonable cause for the said failure. In the given case, the assessee did not assess the liability under TDS provisions and subsequent to the survey, he blindly followed the instructions of the officers and remitted the liability in cash through SBI without taking any details of determination of liability. Subsequently, the assessee could not comply with the filing of quarterly returns

and made to pay the same amount again. The above situation clearly proves the reasonable cause. Further, the Ld. CIT(A) observed that in view of *malafide* intention on the part of the appellant as per the facts mentioned in the preceding paragraphs, appellant does not deserve any mercy. We failed to understand this observation when the assessee had followed the instruction of the officer by remitting the TDS dues immediately and also paid the same amount twice and also demonstrated the intricacies in collecting information from Department as well as from suppliers of Karnataka area. In our view, the assessee has proper reasonable cause in this issue of failures to comply in filing the quarterly returns. Therefore, we direct the AO to delete the penalty imposed u/s 272(2)(k) of the Act.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 12/11/2021.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 12/11/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Dy./Assistant Registrar)
ITAT, Mumbai