

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2974/PUN/2017  
निर्धारण वर्ष / Assessment Year: 2011-12

M/s. State Bank of Hyderabad, At Shrinagar, Nanded- 431602. TAN : NSKSO8336G	Vs.	Joint CIT, TDS Range, Nashik.
Appellant		Respondent

Assessee by : None  
Revenue by : Shri M. G. Jasnani

Date of hearing : 21.03.2022  
Date of pronouncement : 16.06.2022

**आदेश / ORDER**

**PER INTURI RAMA RAO, AM:**

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 1, Aurangabad dated 23.10.2017 for the assessment year 2011-12.

2. The appellant raised the following grounds of appeal :-

"1. Honorable Commissioner of Income Tax (Appeals) has erred in confirming the Penalty of Rs.2,11,100/- u/s 272(A)2(K) of the I.T. Act, 1961. Penalty may please be cancelled.

2. Appellant prays for just and equitable relief.

3. Appellant prays to add, alter, amend and/or withdraw the Ground/s during the Proceedings."

3. Briefly, the facts of the case are as under :

The appellant is a Branch of Public Sector Bank. The Joint Commissioner of Income Tax, TDS Range, Nashik on examination of the quarterly statements furnished u/s 200(3) of the Income Tax Act, 1961 ('the Act') for the financial year 2010-11 had come to know that the appellant had submitted quarterly statements of TDS as required under the provisions of section 200(3) belatedly as detailed as under :-

RRR No.	Form No.	Periodicity	Due Date	Date of filing	Delay Days
33580300001662	24Q	Q4	15-May-11	05-Mar-12	295
33580300001614	26Q	Q1	15-Jul-10	05-Mar-12	599
33580300001625	26Q	Q2	15-Oct-10	05-Mar-12	507
33580300001636	26Q	Q3	15-Jan-11	05-Mar-12	415
33580300001640	26Q	Q4	15-May-11	05-Mar-12	295

4. Therefore, the Joint Commissioner of Income Tax, TDS Range, Nashik issued a show cause notice u/s 272A(2)(k) r.w.s. 274 of the Act to show cause as to why a penalty shall not be levied as the appellant bank had failed to prepare and deliver or caused to be delivered, a quarterly statements u/s 200(3) within such time and in such form as prescribed under Rule 31A of the Income Tax Rules, 1962 ('the Rules'). In response to the said show-cause notice, the appellant had filed explanation vide his letter dated 07.02.2013 by stating that the delay in preparation, delivery of quarterly statements

is only on account of non-availability of PAN numbers of the deductees. Thus, the appellant bank had requested to drop the penalty proceedings initiated u/s 272A(2)(k) of the Act. However, the Joint Commissioner of Income Tax, TDS Range, Nashik rejecting the explanation of the appellant had proceeded with levy of penalty of Rs.2,11,100/- vide order dated 03.06.2013.

5. Being aggrieved by the above order of penalty, an appeal was filed before the Id. CIT(A) who vide impugned order had confirmed the levy of penalty rejecting the plea of the appellant that mere technical breach of law does not entail levy of penalty, as the appellant had failed to demonstrate as to what kind of efforts were made in collecting the PAN numbers of the deductees placing reliance of the decision of the Hon'ble Patna High Court in the case of Veena Theatre vs. CIT, 322 ITR 260 (Patna-HC).

6. Being aggrieved by the above decision of the Id. CIT(A), the appellant is in appeal before us.

7. When the matter was called on, none appeared on behalf of the appellant before us despite due service of notice of hearing on several occasions. In the circumstances, we proceed to dispose of this matter on merits after hearing the Id. Sr. DR.

8. The Id. Sr. DR submits that the order of the Id. CIT(A) is reasoned one and requires to interference.

9. We heard the ld. Sr. DR and perused the material on record. The only issue in the present appeal relates to levy of penalty u/s 272A(2)(k) r.w.s. 200(3) of the Act. The provisions of section 200(3) provide that every person responsible for deduction of tax under Chapter XVIIB shall prepare and deliver or cause to be delivered a quarterly statement of tax deducted at source in the manner within time prescribed under Rule 31A of the Rules. The provisions of section 272A(2)(k) provides for penalty for failure to deliver of such statement within the prescribed time at the rate of Rs.100/- for every day during which the failure continues.

On the other hand, the provisions of section 273B provide that no penalty shall be levied in case an assessee establishes that he was prevented from the compliance of the provisions of the said section for reasonable and sufficient cause. Therefore, in the light of these provisions, the question that is required to be determined by us is whether the explanation offered by the appellant bank before the lower authorities constitutes sufficient and reasonable cause for not filing the prescribed quarterly statements u/s 200(3) within prescribed time or not?. Before the ld. CIT(A), the appellant took a plea that the delay in filing the PAN prescribed returns u/s 200(3) had occurred on account of fact that PAN particulars of the deductees could not be obtained and due to unawareness of the

Returns Prepare Office (RPO), which is constituted and operated by NSDL. This is only mere technical breach of law and, therefore, no penalty can be levied on placing reliance on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs. State of Orissa, 83 ITR 26 (SC) and the decision of the Co-ordinate Bench of the Tribunal in the case of Shah Traders vs. OQT, 56 ITD 33.

10. However, the ld. CIT(A) confirmed the levy of penalty by holding that the appellant had failed to establish that there was a reasonable cause for failure to submit the quarterly statements of TDS within prescribed time placing reliance of the on the decision of the Hon'ble Patna High Court in the case of Veena Theatre vs. CIT, 322 ITR 260 (Patna-HC). It is a matter of record that the appellant is a branch of public sector bank having huge numbers of customers and the explanation given by the assessee that there was delay in obtaining the PAN details of the deductees due to huge number of customers, cannot be easily brushed aside. Furthermore, we have carefully gone through the provisions of Rule 31A which were substituted by Notification No.S.O. 17(E), dated 09.07.2010 w.r.e.f 01.04.2010. It also cannot be denied that the appellant requires some time to familiarize itself with the software introduced by the NSDL, the authorized agency of the income-tax department

to enable it uploading of the TDS returns. In these circumstances, it cannot be said that the explanation offered by the assessee is unreasonable, Therefore, the ld. CIT(A) was not justified in confirming the levy of penalty u/s 272A(2)(k) of the Act, we set aside of order of CIT(A) and TDS Officer. Accordingly, we direct the Assessing Officer (TDS) to delete the penalty of Rs.2,11,100/- u/s 272A(2)(k) of the Act.

11. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 16<sup>th</sup> day of June, 2022.

**Sd/-**  
**(S. S. VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 16<sup>th</sup> June, 2022.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
4. The CIT(A)-1, Aurangabad.
3. The CCIT, Nashik.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.