

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.1815, 1816, 1817 & 1818/Ahd/2018
Assessment Years: 2015-16, 2015-16, 2016-17 & 2016-17 respectively**

Torque Automotive Pvt. Ltd.,
2nd Floor Mrudul Tower,
B/H Times of India,
Asharam Road,
Ahmedabad – 380 009.
[PAN – AACCT 6528 R]
(Appellant)

vs. Addl. Commissioner of Income Tax,
(TDS), Ahmedabad.

(Respondent)

Appellant by : None
Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR

Date of hearing : 24.05.2022
Date of pronouncement : 24.06.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These four appeals have been filed by the assessee against four different orders dated 08.06.2018, 09.06.2018, 08.06.2018 & 09.06.2018 passed by the CIT(A)-8, Ahmedabad pertaining to A.Ys. 2015-16, 2015-16, 2016-17 & 2016-17 respectively.

2. The grounds raised are as under :-

ITA No.1815/Ahd/2018 for A.Y. 2015-16

Your appellant being aggrieved by the order passed u/s.271C of the Income Tax Act by Ld. CIT(Appeals)-8, Ahmedabad presents this appeal against the same on the following amongst other grounds.

“1. The Ld. CIT(A) has erred in confirming the penalty of Rs.51,83,473/- u/s.271C of the Income-tax Act, 1961. It is submitted that on the facts and circumstances of the case, the Ld. CIT(A) ought not to have

confirmed penalty au/s.271C of the Act. The incorrect and illegal penalty so levied and confirmed be cancelled.

2. *The Ld. CIT(A) has erred both on facts and on law in confirming the penalty of Rs.46,19,300/- (i.e. Rs.51,83,473 – Rs.5,64,173 excess considered by AO) u/s. 271C of the Act on account of default on TDS payments. It is submitted that Ld. CIT(A) has not appreciated that provisions of Section 271C of the Act are applicable only when there is failure on part of assessee to deduct Tax as required under provisions of Chapter XVII-B and not on account of delayed payments of Tax Deducted. Only due to reasons beyond control and financial crunch, payment was made late by the Company, the said bonafide explanations were not considered neither by AO nor Ld. CIT(A). On facts and circumstances of the case, the impugned penalty levied of Rs.46,19,300/- by invoking the provision of Section 271C of the Act ought to have been deleted. It may be held so now.*

ITA No.1816/Ahd/2018 for A.Y. 2015-16

Your appellant being aggrieved by the order passed by the Ld. Commissioner of Income Tax (Appeals)- 8 presents this appeal against the same on the following amongst other grounds.

- “1. *The Ld. CIT(A) has erred in confirming the penalty of Rs.85,800/- u/s.272A(2)(g) of the Income-tax Act, 1961. It is submitted that on the facts and circumstances of the case as the assessee was prevented by sufficient and reasonable cause. The Ld. CIT(A) ought not to have confirmed penalty u/s.272A(2)(g) of the Act. The incorrect and illegal penalty so levied and confirmed be cancelled.*
2. *The Ld. CIT(A) has erred both on facts and on law in confirming the penalty of Rs.85,800/- u/s. 272A(2)(g) of the Act on account of delay in furnishing TDS Certificates. It is submitted that Ld. CIT(A) has not appreciated that only due to reasons beyond control and financial crunch, payment was made late by the Company, due to which there was consequential delay in furnishing the TDS Certificates. The said bonafide explanations were not considered neither by AO nor Ld. CIT(A). On facts and circumstances of the case, the impugned penalty levied of Rs.85,800/- by invoking the provision of section 272A(2)(g) of the Act ought to have been deleted. It may be held so now.”*

3. In ITA Nos.**1817/Ahd/2018 & 1818/Ahd/2018 for A.Ys. 2016-17**, similar grounds have been raised by the assessee except for the amounts in dispute. Therefore the same are not reproduced.

4. Firstly we are taking up ITA No.1815/Ahd/2018 for Assessment Year 2015-16 wherein order under Section 271C of the Income Tax Act, 1961 has been passed on 24.08.2016. The assessment order under Section 201(1)/201(1A) of the Act was passed on 29.02.2016 and thus the Assessing Officer raised the demand of Rs.63,25,154/- for the TDS default for A.Y. 2015-16. The Assessing Officer concluded that the assessee has deducted tax at source on various payments but had not deposited the same into Government account. The show cause notices for levy of penalty under Section 271C of the Act for A.Y. 2015-16 was issued on 03.03.2016, 07.06.2016 and on 02.08.2016. The Chartered Accountant of the assessee filed details which were taken on record by the Assessing Officer. The Assessing Officer vide order dated 24.08.2016 held that the assessee is liable to pay penalty of Rs.51,83,473/- being a sum equal to the amount of tax under Section 271C of the Act as the assessee failed to pay the deducted tax within the stipulated time.

5. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. At the time of hearing, none appeared on behalf of the assessee despite giving notice. The last notice was returned back with the remark "left". There was no new address given by the assessee to the Registry, therefore, we are proceeding on the basis of the submissions made before the Assessing Officer as well as before the CIT(A).

7. At the time of hearing, Id. DR pointed out that the company is a defunct company and hence the Director has signed the Appeal Memo is not as per the procedure prescribed under Income Tax Act. Ld. DR relied upon the penalty order as well as the order of the CIT(A).

8. We have heard the Id. DR and gone through the submissions made before the CIT(A) as well as before the Assessing Officer in penalty proceedings under section 271C of the Act by the assessee. From the perusal of the penalty order, it can be seen that the Assessing Officer proceeded on the basis that the assessee failed to pay the deducted tax within the stipulated time but from the perusal of the submissions

of the assessee before the Assessing Officer it is seen that except the TDS on the interest payment to two parties the assessee has paid the TDS before the survey proceedings conducted at their premises as there was death of a person who was looking after the Income Tax matter of the Company which is mentioned in paragraph no.3 of the penalty order. These crucial facts were totally ignored by the Assessing Officer as well as by the CIT(A). Further, it is noticed that the payment of delayed TDS to the Government Treasury was not a negligent act on the part of the assessee but due to unavoidable circumstances. Therefore, Section 271C of the Act is not properly invoked. The ratio laid down in CIT vs. Reliance Petroproducts Pvt. Ltd., 189 Taxman 322 is applicable in the present case though the Section mentioned in that decision is Section 271(1)(c). Further, the CIT(A) has simplicitor confirmed the penalty without looking into the aspect that the levy of penalty was in excess of the default. Thus, the reasoning given by the CIT(A) is not just and proper. Hence, penalty levied under Section 271C of the Act needs to be deleted. ITA No.1815/Ahd/2018 for AY 2015-16 is allowed.

9. As regards ITA No.1816/Ahd/2018, the show cause notices for levy of penalty under Section 272A(2)(g) for the A.Y. 2015-16 was issued on 03.03.2016, 07.06.2016 & on 02.08.2016. In response to these notices, the Chartered Accountant of the assessee filed details which were taken on record. The assessee submitted that the relevant documents were filed before the Assessing Officer thereby pointing out that the assessee company suffered from liquidity crash due to slow-down of the business and there was a delay in payment of TDS due to non-availability of funds and thus this cannot be treated as wilful default. The Assessing Officer proceeded on the basis that the assessee made default by not filing quarterly returns in Form No.24Q and 26Q and by not issuing certificates of TDS in time and is liable to pay penalty under Section 272A(2)(g) of the Act which is for accumulated 858 days and Rs.100/- per day totalling Rs.85,800/-. Here also penalty was imposed without taking cognisance of the reasons given by the assessee which was genuine reason and cannot be strictly adhered to. The delay in issuance of certificate within the stipulated time was due to the non-availability of financial advise/concerned person who dealt with the tax matters of the company (death of Manish Shah). Thus, the CIT(A) totally ignored crucial aspect of

the case and imposed penalty without application of mind. Hence, appeal of the assessee being ITA No.1816/Ahd/2018 for A.Y. 2015-16 is allowed.

10. ITA No.1817/Ahd/2018 for A.Y. 2016-17 is identical to ITA No.1815/Ahd/2018 and hence the same is allowed.

11. ITA No.1818/Ahd/2018 for AY 2016-17 is identical to ITA No.1816/Ahd/2018 and hence the same is allowed.

12. In the result, all the four appeals filed by the assessee are allowed.

Order pronounced in the open Court on this 24th day of June, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 24th day of June, 2022

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad