IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI 'SMC' BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA.Nos.02 & 03/PAN/2022
Assessment Years 2016-17 & 2017-18

M/s. Umesh Kumar Bharati, Prop. Of M/s. Vishwakarma Constructions, Plot No.5, Verna Industrial Estate, Verna, Salcete Goa. Goa. PIN – 403 722 PAN AGEPB6260F	vs.,	Addl. Commissioner of Income Tax, TDS Range, Pundalik Niwas, Ground Floor, Rua-de-Ourem, Panaji-Goa. Goa. PIN – 403 001.
(Appellant)		(Respondent)

For Assessee :	Shri Sandip Bhandare
For Revenue :	Shri N. Shrikanth

Date of Hearing :	16.01.2023
Date of Pronouncement :	24.01.2023

ORDER

This assessee's appeal for assessment year 2016-17 and 2017-18, arise against the CIT(A)-2 Panaji, Panaji, Goa's orders both dated 23.12.2021, passed in case No.CIT(A)-2/PNJ/M-1/ 2021-22 and in case No.CIT(A)-2/PNJ/M-2/2021-22, respectively, in proceedings u/s.271(C) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case files perused.

3. It emerges during the course of hearing that the assessee's identical sole substantive grievance raised in both these appeals challenges correctness of lower authorities action imposing sec.271C penalties of Rs.11,54,500/- and

Rs.13,45,822/-, assessment year-wise, respectively, by way of pleading following substantive grounds :

1) *"The order of CIT (appeals) is incorrect on facts and in law.*
2) *Levy of penalty is not automatic and the Assessing Officer has erred in not considering the genuine difficulties faced by the appellant.*
3) *There was a survey by Director General of GST Intelligence and they had impounded the records including invoices for financial year 2014-15 and 2015-16 on 01/11/2016. Thereafter again there was survey by Director General of GST Intelligence and they impounded records including invoices for financial years 2016-17 and 2017-18 on 03/05/2018 because of that the accounts of business could not be finalized nor could be audited to trance out any mistakes or defaults as such. The appellant could get release of impounded documents, records from Director General of GST Intelligence, only 23/07/2019 and 08/11/2019. As such it was not possible for the Appellant to determine whether there has been non/short deduction of tax.*
4) *The appellant was helpless, and he could not comply with notices from Addl. Commissioner of Income Tax, TDS Range, because he wanted the details of the*

payments which were not in possession of the appellant as all the documents were impounded by Director General of GST Intelligence as stated above.

5) *The appellant is just 6th Standard pass and has been not well versed with accounting as well as tax compliances, he always depended upon his accountants and tax practitioners. Even there were frequent changes in accountants in the appellant's office. There was no intention to delay the payment of tax and the delay was only on account of the ignorance and lack of knowledge of the appellant.*

6) *The appellant has paid all the TDS liability detected by the survey team. Considering this aspect, the penalty should not have been imposed.*

7) *The appellant was under bona fide belief that TDS provisions are properly complied by his accounts staff and even if there is any error or mistake is committed by them, since the receivers of payments are filing their income tax returns and paying taxes due on their income which include these related payments, there is no default."*

4. Both the learned representatives next invited my attention to the CIT(A)'s detailed discussion affirming impugned penalty(ies) as follows :

5.2 I have carefully considered the submissions made by the AR as well as the discussion made by the AO in his order passed under Section 271C of the Act. A mere claim that the appellant had been cooperating with the income tax department and not well versed with accounting and that no penalty proceedings be initiated, will not make any difference as such a claim made by the appellant does not shield the appellant from the provisions of law relating to penalty. Statute does not recognize these type of defenses under Section 271C of the Act and as such it does not release the appellant from mischief of penal proceedings.

5.3 Section 271C of the Act states;

(1) If any person fails to—

(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

(b) pay the whole or any part of the tax as required by or under—

(i) sub-section (2) of section 115-O; or

(ii) the second proviso to section 194B,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

A mere reading of the Section shows that the provision will apply whenever an assessee failed to deduct or pay as aforesaid. In this case, the assessee had failed to deduct and pay and did so only after his premises were surveyed under Section 133A of the Act. This shows that the assessee had no intention of deduct and pay and did so only after the same was detected by the income tax authorities subsequent to the action under Section 133A of the Act. In the case of *Commissioner of Income-tax, Thiruvananthapuram v. Muthoot Bankers (Aryasala) [2016] 71 taxmann.com 110 (Kerala),Hon'ble HIGH COURT OF KERALA* while holding that penal provisions of section 271C would be attracted observed as under:

"we find that it was the admitted case of the assessee that they did not deduct tax at source as required by them under Section 194A. When there is a failure

on the part of the assessee to deduct tax at source in violation of Section 194A, the penal provisions of Section 271C are attracted. In such a case, the only way out for the assessee is to take the benefit of Section 273B by establishing that there was reasonable cause justifying their failure to comply with Section 194A. Referring to various precedents this Court had occasion to deal with a similar case in the judgment in ITA 139/2013 where it was held that the burden under Section 273B is entirely on with the assessee and that a case which is beyond the control of the assessee and which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides, alone make out a reasonable cause. In this case, Annexure A order of the Joint Commissioner shows that the assessee failed to produce any evidence to substantiate its claims."

The ratio decidendi of the above case clearly lays down the principle that Section 271C shall apply unless the assessee concerned is able to comprehensively show that his case is covered by the provisions of Section 273-B of the Act.

Section 271C provides that if any person fails to deduct whole or any part of the tax as required, then he shall be liable to pay by way of penalty a sum equal to the amount of tax which he has failed to deduct. A bare reading of the aforesaid provision would reveal that the penalty is imposable where there is failure to deduct tax as required to be deducted under the relevant section of the Act. The time of deduction of such tax is undisputedly the time at which interest is to be credited to the account of the payee or when it is paid in cash/cheque or draft.
In the instant case it is not disputed that tax at source was not deducted by the assessee at the time payments were made for rent and to the contractors and advocate. Thus, apparently on account of non-deduction of the tax at source at the time stipulated under the relevant section, the assessee became liable for penalty under section 271C of the Act. The assessee could be exempted from

penalty by applying the provision of section 273-B provided the he is able to satisfy that there was a reasonable cause for failure to deduct tax at source.

Section 273B provides that notwithstanding the provisions contained under section 271C no penalty shall be imposable upon the person or the assessee for any failure referred to in the aforesaid provision if the person or the assessee concerned proves there was reasonable cause for the said failure. In this regard the assessee, in the written submissions, submitted to this office on 21.12.2021, has proffered the following main grounds for relief against the penalty levied under Section 271C of the Act:

1. The assessee was under bona-fide belief that TDS provisions had been properly complied by his accounts staff.
2. The relevant accounts had been impounded by Director General of GST Intelligence during surveys on 01.11.2016 and 03.05.2018 due to which the assessee could not ascertain the TDS liability and pay it within the stipulated time.
3. The assessee being semi-literate was not aware of the provisions of the Act.
4. The payments to contractors, professionals and towards rent have already been added back under Section 40(a)(ia) and therefore no deductions towards the same have been claimed by the assessee.
5. The Hon'ble Supreme Court in the case of CIT, New Delhi vs. M/s. Eli Lilly & Co. Pvt. Ltd. and others and Hon'ble Karnataka High Court in the case of CIT and others vs. The Rajajinagar Co-operative Bank Ltd., have held that no penalty can be imposed under Section 271C of the act where the person proves that there was a reasonable cause for the failure to deduct TDS.

Grounds 1 and 3 supra taken by the assessee mainly state that the appellant being ignorant of the exact provisions on account of his limited education etc. cannot be penalised under Section 271C of the Act. This however goes against

all cannons of justice. Ignorance of law can never be a viable excuse and can definitely not be used to satisfy the condition that there was a reasonable cause for failure to deduct tax at source as envisaged in Section 273-B of the Act. This view has been upheld by various Hon'ble High Court and ITAT in a plethora of judgments. Some of these judgments are enumerated as under:

i. **Ajit Singh Rana *v.* Assistant Commissioner of Income-tax , Range-II, Jalandhar [2013] 33 taxmann.com 502 (Amritsar - Trib.), ITAT AMRITSAR BENCH**

ii. **All India J.D. Educational Society *v.* Director General of Income-tax (Exemptions), Delhi [2011] 198 Taxman 443 (Delhi)**

iii. **Commissioner of Income-tax, Cochin *v.* National Tyres & Rubber Co. of India Ltd [2011] 15 taxmann.com 3 (Kerala)**

iv. **Viswanathan Silk Centre *v.* Commissioner of Income-tax 1994] 72 TAXMAN 300 (MAD.)**

v. **Commissioner of Income-tax, (TDS), Cochin *v.* Thomas Muthoot [2015] 61 taxmann.com 76 (Kerala). Hon'ble High Court of Kerala in this case held that language of section 194A does not leave scope for any ambiguity on liability of a partner to deduct tax on interest paid by him to firm; therefore, belief of partner that he is not liable to deduct tax at source on interest paid to firm, cannot be considered as reasonable cause as contemplated under the relevant section.**

Grounds no. 1 and 3 referred to in written submissions of the appellant submitted to this office on 21.12.2021 cannot therefore be accepted.

5.4 As regards ground no. 2 of the written submissions, it has to mentioned that the act of survey by GST authorities in the premises of the appellant can have no bearing on the issue of levy of penalty under Section 271C of the Act as

the default for which this penalty is applicable is committed at the time of payment by the payer and can be applied in every case where the payment above the prescribed amount is made by the payer without deduction of TDS and without any reasonable cause as would fulfill the provisions of Section 273B of the Act. The appellant could and should have deducted the TDS at the time of making the payment to the payees and he did not require any books of accounts for making such deduction. In fact the repeated surveys by GST authorities actually show that the appellant is a habitual defaulter and has scant regard for legal obligations. That the appellant is a habitual defaulter is also mentioned in the order dated 22.01.2018 under Section 201(1) and 201(1A) of the Act wherein it is mentioned .... *that the deductor* (being the appellant in present case) *is habitual defaulter in remitting the deducted TDS into Central Government Account, in filing of TDS statements plus various other defaults in obliging the provisions of TDS I T Act 1961.* In the case of **[2011] Standard Pesticides (P) Ltd. v.Additional Commissioner of Income-tax 9 taxmann.com 100 (Ahmedabad - Trib.), the ITAT AHMEDABAD BENCH** held that the default of the payer is complete when he makes the payment to the payee without deducting the tax and without there being a reasonable cause. Penalty under section 271C is for the default committed by the payer and the satisfactory nature of explanation has to be seen only with respect to the conduct of the payer himself. The instant ground of the appellant therefore fails as lacking any justification.

5.5 Ground 4 of the appellant wherein reference to the provisions of Section 40(a)(ia) of the Act is made is totally irrelevant in this case because Section 40 of the Act only delineates the amounts not deductible in computing the income chargeable under the head "Profits and gains of business or profession". It has no relevance whatsoever to the act of non-deduction of TDS while making payments above the stipulated amounts and the penal provisions that follow this

act. This ground of the written submissions is also therefore not tenable.

5.6 The two case laws quoted by the appellant stipulate that relief is to be given in cases where reasonable cause exists and no penalty can be imposed under Section 271C of the act where the person proves that there was a reasonable cause for the failure to deduct TDS. In the instant case, the appellant has failed to provide any reasonable cause for his failure to deduct TDS at the time of paying rent and making payments to contractors and advocate. Accordingly, these case laws are of no help to the appellant.

5.7 In view of the above the appeal of the appellant is dismissed and penalty imposed of Rs.11,54,500/- by the AO under Section 271C vide order dated 12.03.2019 is upheld.

5. Learned authorised representative vehemently argued during the course of hearing that both the lower authorities have erred in law and on facts in imposing the impugned sec.271C penalty in assessee's instant twin assessment years. He sought to buttress the point that this assessee has nowhere been a wilful defaulter in preceding assessment years. There was no intentional default on his part in not deducting TDS. And also that he could not comply with the impugned statutory provision requiring TDS deduction as well as filing of returns on account of the clinching fact that all of his corresponding records/books of accounts stood seized during the course of survey.

6. All these assessee's arguments hardly deserve to be accepted. It is made clear that the assessee has himself filed a detailed paper book wherein it is evident from a perusal of the

corresponding necessary details that he had not complied with the due dates prescribed for crediting/paying the TDS in issue. Learned counsel could not rebut that the assessee's submissions in para-10 had duly accepted to have delayed payment of TDS in fourth quarter of F.Y. 2015-16 by 10-12 months followed by similar other instance in first and third quarters of F.Y. 2016-17, respectively. The assessee has not placed on record any material during the course of hearing that he had not maintained the corresponding books of accounts on e-platform and, therefore, it was only due to seizure of the regular books of accounts which ultimately lead to delay in compliance of the TDS provisions in issue. I, therefore, conclude that assessee has not been able to submit any "reasonable cause" or "justifiable" reason explaining his default in complying with the TDS deduction provisions under Chapter-XVII of the Act. Both these impugned penalties stand upheld therefore in light of CIT(A)'s detailed discussion extracted in the preceding paragraphs. Ordered accordingly.

7. This assessee's twin appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 24.01.2023.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 24th January, 2023
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Panaji 'SMC' Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.