

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES:: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.251/PUN/2023
(A.Y. 2011-12)**

Star Quenchers Spirit Pvt. Ltd., Flat No.1-1, Basant Building, Spandan Nagar, Cidco, Aurangabad. PAN: AANCS 2939 J	Vs	JCIT – TDS Range, Nashik.
Appellant		Respondent

Assessee by	:	None
Revenue by	:	Shri M.G. Jasnani, DR
Date of hearing	:	01/05/2023
Date of pronouncement	:	/05/2023

ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals) [NFAC], Delhi, dated 30.01.2023 u/s. 250 r.w.s. 254 of the Act for A.Y.2011-12. The assessee has raised the following grounds of appeal:

1.	<i>CIT(A) has erred in not deleting the penalty as directed by ITAT in its order para 4,5,6. Appellant prays to delete whole of the penalty confirmed by CIT(A) of Rs. 1,09,304/-</i>	Rs.1,09,304/-
2.	<i>Without prejudice to ground No.1 CIT(A) has erred in exceeding his jurisdiction in conforming penalty of</i>	Rs. 1,09,304/-

	<i>Rs. 1,09,304/- against deciding leviability of Rs. 16,300/- for 163 days as directed by the Bench.</i>	
	<i>Appellant prays for cancellation of penalty confirm by CIT(A) exceeding his jurisdiction</i>	
3	<i>Appellant prays to levy cost on CIT(A) for non-application of mind and not following ITAT direction /order</i>	
4	<i>Appellant prays for just and equitable relief.</i>	NA
5	<i>Appellant prays to add, alter, amend, take additional grounds, submit additional evidence, and/or withdraw the ground/s, during appellate proceedings</i>	NA

2. Brief facts of the case:

2.1 It is observed by the Joint Commissioner of Income Tax(TDS), Nashik that the assessee failed to submit quarterly statements u/s. 200(3) of the Act within the prescribed time mentioned in the Income tax Act. The Joint Commissioner of Income Tax(TDS)observed that assessee has filed the quarterly statements beyond the prescribed time as under:-

RRR No.	Form No.	Periodicity	Due Date	Date of filing	Delay (Days)
21000100196401	26Q	Q1	15-Jul-10	03-Sep-11	415
21000100196412	26Q	Q2	15-Oct-10	03-Sep-11	323
21000100196423	26Q	Q3	15-Jan-11	03-Sep-11	231
21000100196434	26Q	Q4	15-May-11	03-Sep-11	111
31010100160196	27EQ	Q1	15-Jul-10	31-Jul-11	381
31010100160200	27EQ	Q2	15-Oct-10	31-Jul-11	289
31010100160211	27EQ	Q3	15-Jan-11	31-Jul-11	197
31010100160222	27EQ	Q4	15-May-11	31-Jul-11	77

2.2 The Joint Commissioner of Income Tax(TDS), in para 5 of his order, has observed as under:-

“5. In view of the foregoing, considering the period of

default i.e., 415 days, 323 days, 231 days, 111 days, 381 days, 289 days, 197 days and 77 days attracts the penalty as under:-

RRR No.	Form No.	Periodicity	Delay (Days)	Penalty @ Rs.100 per day	Remarks
21000100196401	26Q	Q1	415	41,500/-	Which is restricted to the tax deductible i.e. Rs. 1,158/-
21000100196412	26Q	Q2	323	32,300/-	Which is restricted to the tax deductible i.e. Rs. 1,158/-
21000100196423	26Q	Q3	231	23,100/-	Which is restricted to the tax deductible i.e. Rs. 1,488/-
21000100196434	26Q	Q4	111	11,100/-	Which is less than the tax deductible i.e. Rs. 51,548/-
31010100160196	27EQ	Q1	381	38,100/-	Which is less than the tax collectible i.e. Rs. 1,29,257/-
31010100160200	27EQ	Q2	289	28,900/-	Which is less than the tax collectible i.e. Rs. 85,170/-
31010100160211	27EQ	Q3	197	19,700/-	Which is less than the tax collectible i.e. Rs. 93,644/-
31010100160222	27EQ	Q4	77	7,700/-	Which is less than the tax collectible i.e. Rs. 1,21,137/-
Total penalty			Rs.1158+1158+1488+11100+38100 +28900+19700+7700 = 1,09,304/-		

The deductor, has therefore, rendered itself to be penalized u/s. 272A(2)(k) r.w.s. 200(3) of the Income Tax Act, 1961. I am therefore, satisfied that the assessee has committed a default in not delivering the E-TDS statements within the specified time without any reasonable cause.

6. I therefore, levy penalty of Rs. 1,09,304/- (Rs. One lakh nine thousand three hundred four only) u/s. 272A(2)(k) of the I.T. Act, 1961, which the deductor is liable to pay."

3. **Analysis and findings:-**

3.1 We have heard the Ld.DR and perused the records. No one has appeared on behalf of the appellant assessee.

No adjournment letter filed by the assessee requesting for adjournment of hearing. On perusal of the records, it is observed that the ITAT has sent notice to the Assessee on following address:

Star Quenchers Spirit Pvt Ltd
Flat number 1-1, Basant Building,
Spandan Nagar
CIDCO N-4
Aurangabad 431005

The said notice has been returned by the postal authorities with the remark, "*no such person found on address*". The postal authorities have visited the premises on 24/04/2023.

3.1 Thus, according to the Postal authorities no such person exists at the address. It is important to mention here that the assessee is a company but the address mentioned by the assessee on the Form 36 & Form 35 is a residential flat. This shows that assessee is consciously concealing its real place of business.

3.2 In this case, assessee had filed an appeal against the order of CIT(A) 1, Aurangabad dated 2/12/2016 vide appeal number ITA 591/Pune/2017 for AY 2011-12 against the penalty order u/s 272A(2)(k). The ITAT in ITA 591/Pun/2017 vide order dated 30/08/2019 had remanded the matter to the CIT(A) for denovo-adjudication after giving opportunity to the assessee. At that time assessee had pleaded before the ITAT that matter can be remanded to CIT(A) for verification.

3.3 The CIT(A) as per the direction of the ITAT in ITA 591/Pune/2017 has passed the order u/s 250 on 30/01/2023.

3.4 Aggrieved by the order of the Ld.CIT(A), the assessee filed appeal before this ITAT. However, as mentioned earlier, the assessee has not appeared before this ITAT. No paper book or statement of fact has been filed by the assessee before the ITAT.

3.5 It is a fact that the assessee has filed the Quarterly statement u/s 200(3) of the Act beyond the statutory time limit. Therefore, the Joint Commissioner of Income Tax levied the penalty u/s 272A(2)(k) of the Act. In the penalty order the Joint Commissioner of Income Tax has specifically mentioned that the assessee has not given any reason for the delay in filling the quarterly statements.

3.6 It may be important here to mention that though the Joint Commissioner of Income Tax had granted the opportunity to the assessee vide notice dated 18/03/2013, the Assessee had not filed any submission before the Joint Commissioner of Income Tax.

3.7 The Hon'ble Allahabad High Court in the case of *Raja Harpal Singh Inter College vs PCIT* [2016]386 ITR 327 (Allahabad) has held as under on identical facts:

Quote, "12. Section 272A(2)(k) of the Act provides that if any person fails to deliver or cause to be delivered a copy of the statement within the time specified in section 200(3), then penalty of Rs.100 shall be paid for every day during which the failure continues provided that the amount of penalty for failures in relation to a statement made under section 200(3) shall not exceed the amount of tax deductible or collectible as the case may be. Subsection (4) of section 272A provides that no order under this section shall be passed by any income tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

13. In the instant case, it is not disputed that the appellant had been deducting tax at source but had not filed the e-TDS statements in time for five successive assessment years namely

2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. The Assessing Authority, in such circumstances, issued a notice dated 12 October 2012 requiring the appellant to ensure compliance by 26 October 2012 but despite service of notice, the appellant did not ensure compliance. Accordingly, another notice dated 13 December 2012 was issued granting a final opportunity to the appellant to furnish a reply by 26 December 2012. It is at this stage that the appellant appeared through a counsel but, instead of offering any explanation for not imposing penalty, only made a request for adjourning the matter to 7 January 2013. However, on 7 January 2013 neither the appellant nor any counsel appeared nor any explanation was furnished. It is only on 16 January 2013 that an application was submitted by the Principal of the College to the Assessing Authority. It was stated in the said application that since the Principal had joined the College only on 25 January 2010, it would take some time to collect the records for filing the e-TDS statements. A request was, therefore, made for granting one month time for filing the e-TDS statements. It needs to be noted at this stage that the appellant did file the e-TDS statements on 8 February 2013/9 February 2013. The contention of learned counsel for the appellant is that since no order was passed by the Assessing Authority on this application, it cannot be said that any opportunity was given to the College to furnish explanation for the levy of penalty. This contention of learned counsel for the appellant cannot be accepted. Even if no order was passed on the application, the appellant was obliged to file the statement and offer an explanation but even after the expiry of the period prayed for in the application the appellant did not furnish any explanation for the delay in filing the e-TDS statements. The Assessing Authority, therefore, in the absence of any explanation having been offered by the appellant, levied penalty under section 272A(2)(k) of the Act. It is only before the Commissioner of Income Tax (Appeals) that the appellant, for the first time, offered any explanation. The explanation basically was that prior to the joining of a regular Principal in the College on 25 January 2010, only officiating Principals had been working who did not have an idea that e-TDS statements were required to be filed. The Tribunal noticed that the Appellate Authority had accepted the explanation offered by the appellant and imposed penalty only from 1 April 2010 though the regular Principal had joined the College on 25 January 2010. The Tribunal, accordingly, dismissed the appeal having found that no satisfactory explanation has been furnished for non-filing of the e-TDS statements in time.

14. The Assessing Authority has given reasons as to why it was necessary to file the e-TDS statements in time and they are as follows:— "The most important objective of the TDS provisions is to extend the reach of Income Tax Department so as to make tax administration more effective and efficient and to reduce opportunities for tax evasion so as to bring equity in the system. To achieve this objective, person/s in each organization, who is responsible to make certain payments required to deduct tax at source on or before making such payment and furnish e-TDS quarterly statement online before the NSDL on quarterly basis. Such provisions help in achieve above stated objective through non-intrusive method and thus improves tax compliance and collection. TDS provisions not only increase 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. Hence, in case of non-compliance of TDS provisions, stringent action is incorporated in the income tax law. Penal provisions are part of tax laws and they differentiate between those who pay the taxes and adhere to tax laws as against those who do not. Thus, it not only brings equity in the tax system but also acts as an effective deterrent against possible tax evasion."

15. The Bombay High Court in RashmikantKundalia (supra) also emphasised the necessity of filing e-TDS statement in time and observed: "13. It is not in dispute that as per the existing provisions, a person responsible for deduction of tax (the deductor) is required to furnish periodical quarterly statements containing the details of deduction of tax made during the quarter, by the prescribed due date. Undoubtedly, delay in furnishing of TDS returns/statements has a cascading effect. Under the Income-tax Act, there is an obligation on the Income-tax Department to process the Income-tax returns within the specified period from the date of filing. The Department cannot accurately process the return on whose behalf tax has been deducted (the deductee) until information of such deduction is furnished by the deductor within the prescribed time. The timely processing of returns is the bedrock of an efficient tax administration system. If the Income-tax returns, especially having refund claims, are not processed in a timely manner, then (i) a delay occurs in the granting of credit of TDS to the person on whose behalf tax is deducted (the deductee) and, consequently, leads to delay in issuing refunds to the deductee, or raising of infructuous demands against the deductee; (ii) the confidence of a general taxpayer on the tax administration is eroded; (iii) the late payment of refund affects the Government financially as the Government has to pay interest for delay in granting the refunds; and (iv) the delay in receipt of refunds results into a cash flow crunch, especially for business entities."

16. Thus, though it is sought to be contended by learned counsel for the appellant that non-filing of the e-TDS statements had not resulted in loss to the revenue but the requirement of filing e-TDS statements in time cannot be overlooked. The Department cannot accurately process the returns on whose behalf tax has been deducted until information of such deduction is furnished by the deductor within the prescribed time and as emphasised by the Bombay High Court "timely processing of returns is the bedrock of an efficient tax administration system". It is, therefore, 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 the order dated 22 April 2013. It has been stated that filing of e-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.

17. The decision relied upon by the learned counsel for the appellant primarily are to the effect that before imposing any penalty, adequate opportunity is required to be granted. This is what also was contemplated in section 272A(4) of the Act.

18. We are of the opinion that adequate opportunity had been granted to the appellant but the appellant failed to utilize the opportunities that had been granted. In fact even when the appellant had appeared through a counsel, only an adjournment was sought and even thereafter no explanation was offered before the Assessing Authority. However, an explanation was offered before the Appellate Authority which was taken into consideration and the penalty amount was suitably reduced as the case of the appellant that a regular Principal assumed charge on 25 January 2010 was accepted and the penalty was imposed after that date. The decision dated 3 December 2015 of the Tribunal in ITA Nos.226 and 227, therefore does not help the appellant.

19. We, therefore, find that substantial questions of law that had been framed in this appeal do not arise for consideration.

20. The appeal is accordingly, dismissed" Unquote.

3.8. Thus, Hon'ble High Court (supra) has observed that timely filing of e-TDS returns helps department to process the returns whose tax has been deducted. E-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. Therefore, Hon'ble High Court observed that stringent action is required against such defaults. The Hon'ble High Court upheld the Penalty Order. No order of Jurisdictional Hon'ble High Court has been brought to our notice.

4. In this case no valid reason has been given by the assessee for the delay in filling the Quarterly statements. Therefore, it means there is no valid reason for the delay. The assessee in the statement of facts submitted to the CIT(A) has claimed that no loss to revenue has been caused. However, it does not mean that assessee is allowed to skip the provision of filling the quarterly statements. As per the Income Tax Act, assessee was duty

bound to file the Quarterly statements within the statutory time limit mentioned in the Act. It is an admitted fact that the assessee has failed to file the quarterly statements within the statutory time. Therefore, respectfully, following the decision of the Hon'ble Allahabad High Court (supra), we uphold the Penalty Order u/s 272A(2)(k) of the Act. We are of the opinion that sufficient opportunity was granted by the Id.CIT(A) and the Joint Commissioner of Income tax but the assessee failed to avail such opportunity. Accordingly, we dismiss the appeal of the assessee.

5. In the result, appeal of the assessee is dismissed.

Order pronounced in open Court on 04th May, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Dated : 04th May, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, "B" Bench, Pune.
6. Guard File.

By Order

Senior Private Secretary
ITAT, Pune.