

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA Nos. 1634, 1635/Del/2022
(Assessment Years: 2009-10 & 2010-11)

Ambience Developers & Infrastructure Pvt. Ltd, L-4, Green Park Extention, New Delhi, Delhi (Appellant)	Vs.	JCIT, Range-73, New Delhi (Respondent)
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PAN: AAECA6894P

ITA No. 1633/Del/2022
(Assessment Year: 2010-11)

Ambience Commercial Developers Pvt. Ltd, L-4, Green Park Extention, New Delhi, Delhi (Appellant)	Vs.	JCIT, Range-73, New Delhi (Respondent)
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PAN: AAECA6845N

Assessee by :	Shri Anand Choudhary, Adv
Revenue by:	Shri Kanv Bali, Sr. DR

Date of Hearing	06/11/2023
Date of pronouncement	16/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 1633/Del/2022 for AY 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 27/10073/2009-10 dated 18.05.2022 against the order of assessment passed u/s 272A(2)(k) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 25.02.2021 by the Assessing Officer, JCIT, Range-73, New Delhi (hereinafter referred to as 'Id. AO') and appeal in ITA Nos. 1634 and 1635/Del/2022 for AYs 2009-10 and 2010-11, arises out of the order of the Commissioner of Income Tax (Appeals)-27, New

Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 27/10053/2008-09 dated 20.05.2022 against the order of assessment passed u/s 272A(2)(k) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 09.03.2021 by the Assessing Officer, JCIT, Range-73, New Delhi (hereinafter referred to as 'Id. AO').

2. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

3. The only effective issue to be decided in all these appeals is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s 272A(2)(k) of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the assessee had furnished its TDS returns on a quarterly basis with certain delays, which are tabulated in pages 2 and 3 of the order of the Id. CIT(A). The assessee had explained that the delay in filing of TDS returns was due to the paucity of funds with the assessee and accordingly the assessee had remitted the TDS with applicable interest u/s 201(1A) of the Act to the account of the Central Government. The TDS returns could not be filed electronically without remitting the requisite taxes. Further it was explained that some of the parties had not furnished their Permanent Account Number (PAN), without which the assessee could not file its TDS returns electronically. Hence there was a delay on the part of the assessee to file the TDS returns in time. The Quarterly TDS returns were suo moto filed by the assessee after due remittance of TDS with applicable interest without receiving any notice from the income tax department. Accordingly, it was pleaded that there was only a technical venial breach committed by the assessee, for which it should not be invited with the levy of penalty u/s 272A(2)(k) of the Act. The Id.

AO however did not heed to the aforesaid contentions of the assessee and proceeded to levy penalty u/s 272A(2)(k) of the Act for the delayed filing of quarterly TDS returns. This action of the Id. AO was upheld by the Id. CIT(A).

5. We find that the assessee had duly explained the reasons for the delayed filing of TDS returns. The reasons explained by the assessee were not found to be false by the revenue. We find that the assessee had already suffered the interest u/s 201(1A) of the Act for the late remittance of TDS. Hence there is no loss to the exchequer by the delayed filing of TDS returns by the assessee. For a mere technical venial breach, the assessee should not be invited with penalty u/s 272A(2)(k) of the Act. Our view is further fortified by the decision of Delhi Tribunal in the case of Haryana Distillery Ltd vs JCIT reported in 97 taxmann.com 571 dated 4.9.2018.

6. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that this is not a fit case for levy of penalty u/s 272A(2)(k) of the Act. Accordingly, the grounds raised by the assessee for all the years under consideration are allowed.

7. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 16/01/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 16/01/2024
A K Keot

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi