

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI C.N. PRASAD, JUDICIAL MEMBER

आयकर अपील सं /I.TA No. 4568, 4569 & 4570/Mum/2014

(निर्धारण वर्ष / Assessment Year:2008-09 to 2010-11

Seafarer's Welfare Fund Scoeity, Commerce House,1 st Floor, Curimbhoy Road, Ballard Estate, Mumbai-400 001	बनाम/ Vs.	The Addl. CIT (TDS), Range-3, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACTS 6282J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर से/ Appellant by:		Shri N.J. Jawker
प्रत्यर्थी की ओर से/ Respondent by:		Shri Kailash Gaikwad

सुनवाई की तारीख / Date of Hearing : 18.07.2016

घोषणा की तारीख /Date of Pronouncement :27.07.2016

आदेश / O R D E R

PER C.N. PRASAD, JM:

These three appeals are filed by the assessee against the order of the Ld. CIT(A)-14, Mumbai dated 9.4.2014 pertaining to assessment year 2008-09 to 2010-11 in confirming the levy of penalty u/s. 272A(2)(K) of the Act for delay in submission of TDS returns (quarterly).

2. Brief facts are that the assessee for all these Assessment Years filed quarterly TDS returns in form Nos. 24Q and 26Q belatedly.

Showcase notice was issued to the assessee as to why penalty u/s. 272A(2)(K) should not be levied. The assessee in its reply submitted that the assessee society has deducted TDS for all these Assessment Years at the applicable rates and deposited the same within the stipulated time, therefore the society has not willfully delayed in filing the quarterly returns and it is only for the reason that staff was not aware of the rules, the delay in filing of quarterly returns occurred. However, the Assessing Officer imposed penalty for all these three Assessment Years for delay in filing the TDS quarterly returns.

3. On appeal, the Ld. CIT(A) sustained the order of the Assessing Officer in levying penalty.

4. The Ld. Counsel for the assessee submits that the assessee has deducted the TDS at applicable rates and has deposited the same with the concerned authorities before the end of the financial year. The assessee has also filed the quarterly TDS returns before the end of financial year. The Ld. Counsel for the assessee further submits that delay in filing of the returns was mainly due to non-availability of the competent staff and ignorance with reference to compliance with the provisions of the I.T. Act. The delay in filing of the quarterly return of TDS was not intentional and was only a procedural delay and is only a technical default and no penalty is to be levied.

4.1. He further submits that levy of penalty is not mandatory in bonafide cases. The Ld. Counsel for the assessee relied on the decision of Mumbai High Court in the case of CIT Vs Schell

International (278 ITR 630) wherein it was held that, where the assessee was a film producer, produced only one film, which was failed at Box office failure to file statement since assessee was not aware of duty to file statement, penalty, need to be imposed. It was also held that ignorance of law is no excuse but there is no presumption that everyone knows the law. Where tax was deducted at source and deposited in the account of the Government in time, but Form 26A was not filed, there existed a bonafide belief in the matter of requirement of furnishing Form 26A, so that it is reasonable cause. There is no case to levy penalty (Mahendra Praksh Sarraf Vs DCIT (1998) 64 ITD 382 (Del.)). He further submits that considering the facts of the case and decisions cited above and considering the objectives of the charitable trust for welfare of cross section of seafarer, the penalty levied for all these Assessment Years are unjustifiable and requested to delete the same.

5. The Ld. Departmental Representative vehemently supports the orders of the authorities below.

6. We have heard the rival contentions and perused the orders of the authorities below. Admittedly, in this case, the assessee has deducted TDS and remitted the same in the Government account. However, the quarterly returns were filed belatedly. The assessee is a charitable organization established for welfare of seafarers registered under Mumbai Public Trust Act, 1950 and also registered under Societies Registration Act, 1860. It was established for the purpose of welfare of retired seamen widows and their dependents and his head by Director General of Shipping as ex-officio Chairman. The assessee contents that there was no willful delay in submission

of TDS quarterly returns and the staff was not aware of the I.T. rules. We find that there is no revenue loss since the assessee has remitted the TDS in time to the Government account. Penalty cannot be imposed for delay in filing of returns as there is reasonable cause. The delay in filing the return is at best a technical or venial breach of law and no contumacious conduct can be attributed to the assessee. The Hon'ble Supreme Court in the case of Hindustan Steel Ltd (83 ITR 26) held as under:

“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. In view of the above, we are of the view that the Ld. CIT(A) was fully justified in cancelling the penalty. We, therefore, uphold his order and dismiss the appeal”.

7. In view of what is stated above, we hold that delay in filing the return was supported by reasonable cause and in any case, there was only a technical and venial breach of the provisions of law. Hence, we delete the penalty levied u/s. 272A(2)(K) for all these Assessment Years.

8. In the result, the appeals filed by the assessee are allowed.

Order pronounced in the open court on 27th July, 2016.

Sd/-

(RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 27th July, 2016

व.नि.स./ Rj , Sr. PS

Sd/-

(C.N. PRASAD)

न्यायिक सदस्य/JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai