

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

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.1687/Mum/2015
(Assessment Year 2010-11)

Kailash Mahal Co.Op. Hsg.Ltd.,
50, Kailas Mahal Pedder Road,
Cumbala Hill, Mumbai 400 026.
PAN:AAABK 0348M

..... Appellant

Vs.

The Addl. CIT (TDS), Range-2,
701, Smt. K.G.Mittal Hospital,
Charni Road(W),
Mumbai - 400 002

.... Respondent

Appellant by : Shri S.C. Agarwal
Respondent by : Shri Deepak Ripote

Date of hearing : 21/07/2016
Date of pronouncement : 21/09/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeal filed by the assessee pertaining to assessment year 2011-12 is directed against an order passed by CIT(A)-59 Mumbai dated 08/01/2015 which in turn arises out of an order passed by the Assessing Officer under section 272A(2)(k) of the Income Tax Act, 1961 (in short 'the Act') dated 26/12/2011.

2. In this appeal, the point of dispute relates to penalty imposed by the Assessing Officer of Rs.49,779/- under section 272A(2)(k) of the Act

for delay in submission of quarterly statement of TDS in Form No.24Q, which was required to be filed in terms of section 200(3)r.w.r 31A of the Income Tax Rules, 1962(in short 'the Rules'). In para 2.1 of the order of the CIT(A), the delay has been enumerated and as per the CIT(A) the non-compliance by the assessee deserves to be penalised in terms of section 272A(2)(k) of the Act .

3. Before us, the Ld. Representative for the assessee pointed out that the instant assessment year is the only year, where assessee had defaulted in submission of the quarterly statement of TDS and, it was further pointed out that assessee had indeed furnished an annual statement of TDS. It was, therefore, contended that considering the circumstances of the case, penalty levied by the income tax authorities be set-aside.

4. On the other hand, Ld. Departmental Representative has defended the imposition of penalty as per reasons assigned by the CIT(A), which we have already noted above and is not being repeated for the sake of brevity.

5. Having considered the rival stands, it is quite clear that the penalty in question is for delay in submission of the quarterly statement of TDS in form No.24Q, and not for the compliance requiring deduction of tax at source and deposit of the same with the Government Treasury. At the time of hearing, the Ld. Representative for the assessee pointed out that in the past or in the subsequent years there was no occasion for the assessee to deduct tax at source and in fact, even during the year under consideration it deducted tax at source on payment made

to a contractor only. For this reason, the assessee was under a bonafide impression that it was to file only the Annual statement of TDS, which it did. In our considered opinion, having regard to the entire conspectus of facts and circumstances, in the present case, no penalty under section 272A(2)(k) of the Act is leviable. In fact, a perusal of the orders of the authorities below reveal that no particular justification is made out to levy penalty. It is a well settled proposition that no penalty can be levied merely because there is a provision in law. Therefore, in our view, the penalty levied of Rs. 49,779/-deserves to be deleted. We hold so.

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

Order pronounced in the open court on 21/09/2016

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 21/09/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai