

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH “ A ”**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND  
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

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| I.T.A. No.933/Bang/2015<br>(Assessment Year : 2011-12)        |     |  |
| Dy. Commissioner of Income Tax,<br>Circle 3(2)(1), Bangalore. | Vs. | Shri K. Surendra Nagu,<br>No.1788/C, 8 <sup>th</sup> Cross, 5 <sup>th</sup> Main,<br>RPC Layout, Vijayanagar II Stage,<br>Bangalore-560 040<br>PAN ANMPS 7092K |
| Appellant   |     | Respondent.  |

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| Appellant By : Dr.P.K. Srihari, Addl. CIT (D.R.)<br>Respondent By : None. |
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Date of Hearing : 20.04.2016.

Date of Pronouncement : 27.04.2016.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the Revenue is directed against the order dt.24.3.2015 of Commissioner of Income Tax (Appeals), Bangalore-3 for the Assessment Year 2011-12 arising from levy of penalty under Section 221(1) of the Income Tax Act, 1961 (in short 'the Act').

2. The Revenue has raised the following grounds :

*“ 1. The order of the learned CIT (Appeals) is opposed to law and facts of the case.*

*2. On the facts and in the circumstances of the case the learned CIT (Appeals) erred in law in directing the Assessing Officer to cancel the penalty under Section 221(1) without appreciating the fact that the assessee was never absolved of his liability for payment of self assessment tax neither he ceased to be assessee not to be in default for the period of default as per the provisions of section 140A by paying the self assessment tax at a later date, and the levy of penalty under Section 221(1) by the Assessing Officer after giving due opportunity to the assessee, which was not availed by him, is totally justified by the Assessing Officer.*

*3. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT (Appeals) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*

*4. The appellant craves leave to add, alter, amend and / or delete any of the grounds mentioned above.”*

3. None has appeared on behalf of the assessee when this appeal was called for hearing. We propose to hear and dispose this appeal after hearing the learned Departmental Representative.

4. We have heard the learned Departmental Representative and considered the relevant material on record. The learned Departmental Representative has submitted that the assessee filed its return of income on 30.9.2011 for an admitted income of Rs.1,26,95,430. The self-assessment tax along with the interest under Section 234B & 234C of the Act was payable at Rs.41,66,520. The assessee has claimed TDS credit of Rs.15,35,811 and balance amount of Rs.26,30,709 was shown as paid in the return filed. However, on verification of the return, the Assessing Officer found that the assessee was liable to pay self-assessment tax of the said amount of Rs.26,30,709 which was not paid on or before the due date of filing of return. The payment was finally made only on 19.6.2012 after a period of 9 months from the due date of filing of return.

Therefore, the assessee violated the provisions of section 140A of the Act. Thus the learned Departmental Representative has submitted that the Assessing Officer has levied the penalty in question as the assessee has defaulted in making the payment of self-assessment tax on or before the due date of filing of return. He has supported the order of the Assessing Officer passed under Section 221(1) of the Act.

4. We find that the assessee contended before the CIT (Appeals) that due to financial crisis, the assessee could not pay the self-assessment tax within the prescribed period as required under the provisions of section 140A of the Act. The assessee pleaded before the CIT (Appeals) that the Assessing Officer did not give an opportunity to the assessee to explain the delay for making payment of tax. The CIT (Appeals) after considering the explanation and submissions of the assessee has deleted the penalty levied by the Assessing Officer under Section 221(1) in paras 5 & 6 as under :

*“5. I have considered the submissions before me. It is pointed out by AR of the appellant that on the date of levy of penalty under Section 221(1) the assessee was not an assessee in default as the self assessment tax had been paid on 19.6.2012 itself. Further the AR has contended that adequate opportunity was not given as the notice which was received by the assessee by email dt.19.2.2014 required attendance on 24.1.2014. Further the order has passed on 20.2.2014 itself rendering it impossible for the assessee to represent to this case.*

*6. AR has also pointed out that the assessee had a reasonable cause for delay in payment of self assessment tax. The assessee being a civil contractor who is dependent on government for releasing payments face delays which resulted in a liquidity crunch which resulted in the self assessment tax remaining unpaid when return of income was filed. The payment was made along with interest due on 19.6.2012 itself. In my view the Assessing Officer has not made out the*

*case that the assessee was an assessee in default when the notice u, 221 was issued. The provisions of section 140A(3) state that an assessee is deemed to be in default only in respect of tax or interest or both remaining unpaid. In the order of penalty it is stated by the Assessing Officer that the notice under Section 221(1) was issued on 17.1.2014. It would emerge that on the date of issue of notice there is no tax that remained unpaid based on which assessee is to be considered an assessee in default. As the underlying condition for treating the assessee in default for initiation of penalty under Section 221 no longer exists, the action of the Assessing Officer is not tenable or in consonance with law. Further the liquidity crunch faced by the assessee would constitute a reasonable cause for the delay in payment of self assessment tax. The penalty levied is therefore required to be deleted.”*

Thus it is clear that the assessee made payment of the self-assessment tax along with interest due on 19.6.2012. Therefore, though the assessee paid the self-assessment tax belatedly however it was finally made on 19.6.2012 along with the interest upto the said date. When the assessee had explained the facts and circumstances under which the assessee could not pay the tax within the prescribed period and finally paid it along with interest then we concur with the finding of the CIT (Appeals) that the Assessing Officer was not justified in levying penalty under Section 221(1) of the Act to the 100% of the tax liability of the assessee. Accordingly, in the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the CIT (Appeals).

5. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 27.04.2016.

Sd/-  
**(A.K. GARODIA)**  
Accountant Member

Sd/-  
**(VIJAY PAL RAO)**  
Judicial Member

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