

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2034 &2035/Del/2015
(Assessment Year: 2008-09 and 2011-12)

M/s. Oriental Insurance co. ltd, Plot No. 4, IInd Floor, Pankaj Plaza, Sector-4, Dwarka, New Delhi PAN: AA ACT0627R (Appellant)	Vs.	JCIT (LTU) Delhi (Respondent)
--	-----	-------------------------------------

Assessee by :	Shri Shubham Gupta, Adv
Revenue by:	Shri SR Senpati, Sr. DR
Date of Hearing	09/05/2018
Date of pronouncement	16/07/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. These are appeals filed by M/s. Oriental Insurance co. ltd (the assessee) against the order of the Id CIT(A)-22, New Delhi dated 27.01.2015 for the Assessment Year 2008-09 and 2011-12, wherein, the penalty of Rs. 66000/- and Rs. 176200/- levied by the Id AO u/s 272A(2)(k) of the Act by the Joint Commissioner of Income Tax (LTU), Delhi was confirmed.
2. The assessee has raised the following grounds of appeal for the Assessment Year 2008-09:-
 - "1. That order of AO levying penalty u/s 272A (2)(k) is illegal, bad in law and without jurisdiction.
 2. That in view of facts and circumstances of the case and in law, the non filing of TDS returns is merely a technical default and there is no loss to the Government exchequer.
 3. That in view of facts and circumstances of the case, the CIT(A) erred in upholding the action of AO of imposing penalty of Rs 66,000/- u/s 272A(2)(k) of Income Tax Act (for short "Act").
 4. That in view-of facts and circumstances of the case, the QIT(A) failed to appreciate that appellant had reasonable cause of hot filing of TDS return in time.

5. *That in view of facts and circumstances of case, the CIT(A) failed to consider that the case of the appellant does not warrant levy of penalty in view of provisions of s 273B of Act.*
 6. *That in view of facts and circumstances of the case, the CIT(A) failed to appreciate that throughout the appellant was under a bona fide belief that TDS returns have been filed.*
 7. *That in view of facts and circumstances of the case, the CIT(A) failed to consider that appellant is otherwise regular in depositing TDS and filing TDS returns.*
 8. *That the penalty levied is unjust, unlawful, and highly excessive. The penalty levied cannot be justified by any material-on record.*
 9. *That all the facts and circumstances of the case and the material available on record have not been properly considered and the judicially interpreted and the order passed is illegal and bad in law."*
3. Similar grounds were also raised for AY 2011-12.
4. The brief facts for Assessment Year 2011-12 of the case is that the assessee is an Insurance Company who filed its Form NO. 24Q on 04.01.2013 which was supposed to be filed on 15.06.2011 and thereby causing delay of 660 days and for this the Id JCIT, LTU issued a show cause notice on 18.03.2013 for levy of penalty u/s 272A(2)(k). The assessee submitted that TDS has been deposited within the time, however because of the non-compliance of some taxation matters assigned to one of the professional who failed to perform his work in time, the delay has caused. It was further stated that the outside consultancy was kept assuring that the work has been completed, however when it came to the knowledge of the assessee that such work is pending the consultant was removed and the assessee filed the above return on its own. It was further stated that for last five years this is the only one instance where the return has been delayed for one quarter for each year. It was contended that the error is not intentional and has occurred due to oversight of the outside professional. It was further contended that as the tax deduction at source is deposited in time, there is no loss to the revenue and the above breach is merely technical

breach. Ld AO rejected the explanation of the assessee and held that there was a gross negligence on the part of the assessee and penalty of Rs. 100 per day was levied by order dated 25.09.2013. The assessee contested the above appeal before the Id CIT(A) who held that the assessee is a public sector undertaking with many senior and experts officers who could not ensure a simple compliance of TDS return. He therefore, upheld the penalty in absence of proper justification. Therefore, the assessee is in appeal before us. Similar are facts for Assessment Year 2008-09.

5. The Id AR reiterated the submission made before the Id CIT(A) and the Id AO whereas, the Id Sr. DR supported the orders of the lower authorities.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. In the present case the quarterly TDS return in form No. 24Q, which was to be filed by the assessee on 15.06.2011 was filed on 05.04.2013 causing the delay of 660 days. The main reason shown by the assessee is that the work was entrusted to an outside professional who did not complete it within the time. Therefore, it was submitted that the delay has caused because of the non performance of the outside professional as promised. In support of the contention the assessee also submitted the letter of the professional. However, the moment the assessee came to know about the non filing of TDS return same were filed immediately. Admittedly, the assessee has deposited the tax in time to the credit of the Central Govt. However, there was delay in filing of the return due to the above cause. The provision of section 272A providing the penalty for various offences is subject to provision of section 273B of the Act. That section provides that no penalty shall be imposed under specified section, if there was a reasonable cause proved by the assessee for the said failure. On looking at the reason we find that there was a reasonable cause in delay in filing the above forms by the assessee. It is further to be noted that the assessee has stated that this single default by the assessee which too was unintentional and with a

reasonable cause. In view of this we direct the Id AO to delete the penalty of Rs. 66000/- u/s 272A(2)(k) of the Act. Accordingly we reverse the orders of the lower authorities and also the appeal of the assessee. In the result the appeal of the assessee is allowed.

7. Now we come to the appeal of the assessee for the Assessment Year 2011-12, wherein, the penalty of Rs. 176200/- levied by the Id AO u/s 272A(2)(k) of the Act by the Joint Commissioner of Income Tax (LTU), Delhi was confirmed.
8. In the similar facts and circumstances of the case and the finding given by us in the above para, we reverse the orders of the lower authorities and allow the appeal of the assessee and direct the Id AO to delete penalty of Rs. 176200/- levied u/s 272(2)(k) of the Act.
9. In the result appeals of the assessee for both the Assessment Years are allowed.

Order pronounced in the open court on 16/07/2018.

-Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 16/07/2018
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi