IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA

BEFORE SHRI A. T. VARKEY, JM &DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1890/Kol/2018

(निर्धारणवर्ष / Assessment Year: 2011-12)

Sudip Roy Choudhury **148/2, N.S. C. Bose Road, Kolkata-700040**	**Vs.**	**JCIT(TDS), Range-59, Kolkata**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **ADEPR 2283 D**		
(Assessee)	**..**	**(Revenue)**

Assessee by : Shri Miraj D. Shah, AR
Respondent by : Shri Radhey Shyam, CIT DR

सुनवाईकीतारीख/ **Date of Hearing** : **22/04/2019**

घोषणाकीतारीख/**Date of Pronouncement** : **12/06/2019**

आदेश / O R D E R

Per Dr. A. L. Saini:

The captioned appeal filed by the Assessee , pertaining to assessment year 2011-12, is directed against the order passed by the Commissioner of Income Tax (Appeal)-24, Kolkata, which in turn arises out of a penalty order passed by the Assessing Officer u/s 272A(2)(k) / 274 of the Income Tax Act, 1961 (in short the 'Act') dated 28/06/2013.

2. The grounds of appeal raised by the assessee are as follows:

1. For that the Appellate order passed was in violation of principles of natural justice and hence the entire proceeding was bad in law and thus the Appellate Order be cancelled / quashed.

2. For that in the facts and circumstances of the case the learned CIT(Appeals) of Income Tax erred in confirming the penalty u/s 272A(2)(k) of the Income Tax Act, 1961 without accepting the reasonable cause shown

within the meaning of Sec 273B the Income Tax Act, 1961. The imposition of penalty was bad in law and hence the same be deleted and or quashed.

3. For that the penalty imposed u/s 272A(2)(k) of the Income Tax Act, 1961 by the learned CIT(Appeals) is bad in law and therefore the same is unjustified and be deleted.

4. The appellant craves leave to produce additional evidences in terms of Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.

5. The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.

3. Brief facts qua the issue are that Assessing Officer noted that assessee has filed quarterly TDS statements late, therefore he has imposed a penalty of Rs. 81,178/- invoking the provisions of section 272A(2)(k) of the I T Act, 1961 as per the following computations:

Sl. No.	Delay in days	Rate per day	Total Amount	Amount of Tax deducted	Penalty as prescribed
1	690	100	69,000	21,078	21,078
2	691	100	60,100	61,091	61,091
	Total				81,178

4. Aggrieved by the order of the Assessing Officer the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the order of the Assessing Officer. Aggrieved by the order of the ld. CIT(A) the assessee is in appeal before us.

5. We have heard both the parties and perused the material available on record. We note that in this case, a penalty of Rs. 81,178/- was imposed vide Order u/s 272A(2)(k) / 274 of the I. T. Act, 1961 dated 28.06.2013 for late submission of Quarterly TDS Statements [Form 26Q]. The counsel stated before us that the Assessing Officer was not justified in imposing the penalty as there was a

reasonable cause for the failure of the submission of the Quarterly TDS statement and therefore penalty should not be imposed. The ld. DR for the revenue, per contra submitted that assessee did not furnish any evidence to state the nature of the reasonable cause, which had led to the delay in filing of the TDS statements, hence penalty should not be imposed. However, the ld. Counsel for the assessee submitted before us that the matter relating to TDS compliance was delegated by the assessee to its employee who was in charge of such compliances and also to file TDS returns as per norms. The employee without any intimation to the assessee left his employment and for such sudden departure neither the assessee himself nor his new accountant could ascertain a clear picture of his pending jobs including statutory compliances. Much later, with the help of NSDL, the assessee came to know of the delays in filing TDS returns in form no. 26Q for Quarter-l & Quarter-2 for the Financial Year 2010-11 and immediately the assessee filed the pending returns. The assessee also realized that because of such events, there was a substantial delay in making due compliances.

6. We note that the ld. Counsel stated that from the facts of the case it can be seen that the assessee - being a sole proprietor, was in deep administrative trouble due to sudden resignation of his accountant. In fact he was even not at all aware of the fact of non-filing of the TDS return for a considerable time. Only after the new accountant joins and visited NSDL for filing the 26Q for Quarter-3, he was alerted by the NSDL personnel about the lapses and the assessee forthwith filed the pending TDS returns. It is relevant to mention here that so long as the earlier accountant was associated with him, there was not a single instance of such default. Even the TDS involved was deducted in time and deposited without delay but for sudden departure of the accountant there was a non-compliance - which was rectified and cured as soon as the same was brought under the notice of the assessee. Therefore counsel stated that the late filing of TDS return was not intentional nor it can be viewed as deliberate defiance of law or arising from a conduct of gross negligence. As explained above, the assessee had delegated the said responsibility to its employee who left the job all of a sudden and there was no proper handover of pending duties which occasioned delay in filing the return.

In other words, the default had happened for the reasons beyond the control of the assessee and as a man of ordinary prudence, the assessee had rectified the default as soon as the same was came to his notice.

7. We note that the assessee had deducted TDS as per the respective provisions of the Income Tax Act. The same was deposited within the due date at the Government Exchequer. Therefore from the financial point of view there was no loss to the Revenue and there was no question of assessee getting any financial benefit by the assessee for such delay in filing the return. In other words, there was neither any objective nor any factor motivating the assessee to file the return in a delayed manner. On the other hand, the delay was occurred due to sudden departure of the accountant who left the service without notice, without clearing pending jobs and without making a proper handover. Thus there was cogent reason for non- compliance TDS returns in due time and such reasons do definitely created 'reasonable cause'. The penalty provision of Sec 272A(2)(k) of the Income Tax Act 1961 describes the penalty of Rs 100 per day for which the failure continues with the maximum limit of the TDS amount. However the penalty leviable u/ s 272A(2)(k) is subject to the provision of Sec 273B of the IT Act 1961 i.e. no penalty shall be imposed if the assessee proved that there was a 'reasonable cause' over the failure.

8. We note that the term 'reasonable cause' has been explained by the various decisions of courts. Some of the relevant decisions which are applicable to the facts of the assessee narrated above are as follows:

i) The Hon'ble Delhi High Court in the case of Azadi Bachao Andolan v/s Union of India 252 ITR 471 explained the term reasonable cause as follows:

> *"What would constitute reasonable cause cannot be laid down with precision. It would depend upon the factual background and the scope for interference in a reference application or much less in a writ petition is extremely limited and unless the conclusions are perverse based on conjectures or surmises and/ or have been arrived at without consideration. of relevant material and/ or taking into account irrelevant material, there is no scope for interference. Reasonable cause, as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition; for an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and*

measure what is not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. The word "reasonable" has in law the prima facie meaning of reasonable with regard to those circum stances of which the actor, called on to act reasonably, knows or ought to know (see In re, A Solicitor [1945] KB 368 (CA)). Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides. "

ii) We note that Co-ordinate Bench of ITAT Kolkata in the case of Dishergarh Power Supply Co. Ltd 71 TTJ 725 explained the term reasonable cause as follows:

"However, as to what will constitute reasonable cause' is essentially a question of fact, which needs to be determined after taking into account facts and circumstances of each case. These facts and circumstances are best known by the person concerned and, therefore, it is clearly his responsibility to give the necessary explanations to the officer who is to adjudicate on whether or penalty is to be levied. When an explanation is offered by the person concerned, it is duty of the officer to objectively consider the same and determine whether, on the facts of a particular case, such an explanation could possibly explain the default. The officer is not to elaborate upon as to what should have happened in ideal circumstances but he has to only ascertain whether there are any real inconsistencies or factual errors in the explanation and whether, in a real life situation, assessee's explanation may hold good. As observed by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd, "an order imposing penalty for failure to carry out statutory obligation is the result of quasi-criminal proceedings, 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 to its obligations. "

9. We note that in the present case, the assessee deducted the TDS and deposited the same. Even there was no failure to submit return in Form 26Q. There was only failure for its timely submission - which by all counts is a technical breach. Further the delay had happened due to assessee's ignorance about the lapses caused by his past accountant. The accountant left the job without notice. No list of pending job was handed over. The new accountant and the assessee was not aware of the fact of non-filing of TDS return till they visited NSDL. And as soon as the same was noticed, returns for both the quarters were filed. Thus the delay had happened due 'to circumstances beyond the knowledge / control of the assessee. It is further submitted that there was no loss to revenue due to the late filing of return as the tax was deducted and deposited in time and hence the breach of law if any was only a technical default and for that we rely on the landmark judgement of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd 83 ITR 26 wherein the

Supreme Court held *"Penalty will not also 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 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 where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to the act in the manner prescribed by the statue."*

10. In view the facts and circumstances of the case as stated above and in view of the fact that the assessee had shown reasonable cause for his failure in complying with the provisions of section 200(3) of the Act, hence no penalty could be levied. The assessee had deducted and deposited the tax within the prescribed period and thereby made substantive compliance. The government revenue was not defrauded or deferred. The assessee did not have any motive to make any financial gain. Due to sudden resignation of the accountant, the assessee could not trace his left over jobs which include non-filing of TDS returns in Form 26Q for Quarter-1 & Quarter-2 for FY 2010-11. As soon the same was noticed, TDS both the returns were filed. The circumstance shows that the delay in filing the return was not intentional. The assessee was prevented by sufficient cause for making due compliance. Therefore, we note that assessee had shown 'reasonable cause' as referred under section 273B of the Act, hence we delete the penalty of Rs. 81,178/.

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

Order pronounced in the Court on 12.06.2019

Sd/-	**Sd/-**
(A.T. VARKEY)	**(A.L.SAINI)**
न्यायिकसदस्य / JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

दिनांक/ Date: 12/06/2019
(*SB, Sr.PS*)

Copy of the order forwarded to:
1. Sudip Roy Choudhury
2. JCIT(TDS), Range-59, Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches