

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.522/JP/16
निर्धारण वर्ष/Assessment Year : 2011-12

M/s Argus Golden Trades India Ltd., 36-C, Govind Puri, Behind Chambal Power House, Ram Nagar Sodala, Jaipur	बनाम Vs.	The JCIT, TDS, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No. AAHCA8927A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (JCIT)

सुनवाई की तारीख / Date of Hearing : 16/05/2017
घोषणा की तारीख / Date of Pronouncement: 24/05/2017.

आदेश / ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Ld. CIT(A) - III, Jaipur dated 19.02.2016 for A.Y. 2011-12 wherein the assessee has challenged the levy penalty of Rs. 1,02,400/- u/s 272A(2)(K) of the Act.

2. The Id. AO imposed penalty U/s 272A(2)(K) of the Act holding that the assessee company has delayed in filing quarterly e-TDS return within the stipulated time frame as per details below:

Form No.	Quarter	Delay in filing of e-TDS return	Penalty amount (Rs)

26Q	1 st	401 days	40,100
	2 nd	309 days	30,900
	3 rd	217 days	21,700
	4 th	97 days	9,700
Total		1024	1,02,400

3. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT (A) who upheld the levy of penalty and observed that the delay was not of one or two days but there was delay of 1024 days, hence, it reveals a wilful attempt for non compliance of statutory provisions. In the provisions of section 272A(2)(K), the word "shall" is mentioned indicating that if there is violation of these provisions, the imposition of penalty is mandatory. As per section 273B, penalty may not be imposed if the assessee proves that there was a reasonable cause for such failure. The assessee was not having any genuine ground or the compelling circumstances for not filing of TDS return in time. The statutory provisions were introduced so that the deductee can take credit for the taxes it has already paid. Against the order of Id CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the Id. AR submitted that Id. CIT(A) at page 3 & 4 of her order has correctly held that in FY 2010-11, there was a change in filing of e-TDS Return. In this regard, it is submitted that CBDT *vide* notification dated 31.5.2010 had notified changes in data structure and validations for filing e-TDS statement for FY 2010-11. Out of many changes, one of the change was that 100% valid PANs were to be mentioned in the TDS return being Form 26Q. Hence, due to change in law, the assessee was compelled to arrange 100% PANs of the deductees. The task became more difficult for the assessee since it was 2nd year of his incorporation and there were a large no of deductees, few being common in every quarter.

4.1 It was further submitted that there were large number of small deductees to whom payments were made by the company and these were scattered throughout the country. It took great efforts in collecting PAN of all the deductees and the Id. CIT(A) has not disputed the number of the deductees as per details below:

Quarter	Number of deductees
Q1	1438
Q2	1440
Q3	1329
Q4	653

4.2 The Ld. CIT(A) has erred in observing that delay of 1024 days does reveal a willful attempt on part of appellant for non compliance of the said provisions. In this regard, it is submitted that various benches of Hon'ble ITAT have accepted delay of equivalent days or more as a reasonable cause and penalty has been deleted. Details of the same are as under:

S.No	Case	A.Y.	No. of days of delay in furnishing TDS return
1.	Branch Manager, State Bank of India v. ACIT [2014] 41 taxmann.com 268 (Cuttack - Trib.)	2009-10	2781 days
2.	Collector Land Acquisition vs ACIT [2012] 21 taxmann.com 22 (Chd.)	2007-08 to 2010-11	6116 days

4.3 The Ld. AO at page 5 of his order observed that the amount deducted by deductor can possibly be used for his commercial / individual purposes. Further, Id. CIT(A) also held that assessee willfully did not submit the TDS return within the stipulated time. However, Id. CIT(A) failed to bring on record any evidence to support her finding and establish that *mens rea* was involved

in non submission of the same. From the table as stated below, it is evident that although there was delay in filing the e-TDS returns but the TDS was deducted at the rates prescribed by the Income Tax Department and was also deposited in the Government Treasury with the delay of few days but well before the filing of TDS Returns. Thus, there was no loss to Department because late deposition of TDS was compensated by way of payment of Interest on the same, as per the provision of the Act. Hence, there was no mala fide intention involved.

S.No	Quarter (In form No.26Q)	Amount of TDS deduction	Due date of TDS deposition	Date on which TDS deposited
1	April-June	1,64,651.-	07 th of the following month	26.07.2010 07.08.2010
2	July-Sep	4,28,232.-	07 th of the following month	07.10.2010 16.11.2010
3	Oct-Dec	17,497.-	07 th of the following month	10.01.2011
4	Jan-March	5,550.-	07 th of the following month	25.05.2011

4.4 It was further submitted Id. CIT(A) erred in observing that the assessee was not having any genuine ground or the compelling circumstances for not filing of TDS Return in time. Practically it is a difficult task to arrange the PAN of so many deductees who are scattered throughout the county. Therefore the same should have been accepted as reasonable cause. In this regard, the attention is drawn towards the decision of Hon'ble ITAT Jaipur Bench in the case of Shri Ganesham Electronics vs. ACIT (TDS) ITA No. 181/JP/2014 wherein non availability of PAN was acknowledged and treated as reasonable cause. The relevant extract is set out here for the sake convenience.

"..2.1 I have heard the rival contentions and perused the materials available on record. It is observed that the issue in question is squarely

covered by the decision dated 6-11-2015 of ITAT Jaipur (SMC) Bench in the case of M/s. Kaler Electricals (P) Ltd. vs. ACIT, Circle- Sikar (ITA No. 283/JP/2015 for the assessment year 2010-11) wherein it has been observed as under:-

'3. After hearing the Id DR and carefully considered his submission alongwith orders of the tax authorities below, I noted that the assessee has submitted an explanation before the Assessing Officer why the return for the F.Y. 2009-10 were filed late. The assessee submitted that the employee of the assessee looking after TDS could not do the work because of ill health and mental stress and this came to the knowledge of the Director very late. The Director was busy in the expansion of the business and installation of a new plant at Palsana and therefore, there was no willful intention not to comply with the provision. It was also submitted that citing of the PAN was mandatory vide circular dated 12/2/2008 and therefore, the GDS return were not accepted by the computer. The PAN was received very late in the case of Sai Advertising Agency. The facts were not denied by the Id DR, in my opinion, the default was mere a technical breach. It is a case of assessee that he has duly deducted the tax and paid the tax. The provision of Section 273B of the Act mandates that if the assessee was prevented by the reasonable cause, therefore, no penalty should be levied. This provision includes within its fault Section 272A(2), I, therefore, set aside the order of the Id CIT(A) and delete the penalty imposed. My aforesaid view is duly supported by the decision of Hon'ble Rajasthan High Court in the case of CIT Vs. Superintending Engineer (2003) 131 Taxman 596 (Raj.)

4. In the result, the appeal filed by the assessee is allowed.

2.2 Respectfully following the decision of ITAT Jaipur Bench (supra), the appeal of the assessee is allowed..."

4.5 Reliance is further placed on the following judgments wherein it has been held that non-availability of PAN of payee was a reasonable cause for belated filing of TDS return. Relevant extract has been set out here for the sake of convenience.

A) Collector Land Acquisition v. ACIT (2012) taxmann.com 22(Chd.):

"However, it is also explained that as the PAN numbers were not provided by the deductees, so the e-TDS returns could not be filed in time. In our view, the assessee has satisfactorily explained the reasons regarding non filing of TDS returns in time, therefore, no penalty should be levied in these cases. Even otherwise also, the assessee did not derive any benefit whatsoever by not filing the e-TDS returns in time, as the amount of TDS was duly deposited in the government treasury within prescribed time. Such delay has not caused any loss to the Revenue/Income Tax Department"

B) CIT Branch Manager (TDS), UCO Bank vs. ACIT [2013] 35 taxmann.com 45 (Cuttack - Trib.):

"Head note - Section 272A of the Income-tax Act, 1961 - Penalty - For failure to answer question, sign statements, furnish returns or statements, etc. [Reasonable cause] - Assessment year 2009-10 - Assessee-bank failed to file return of tax deducted at source within specified time - It was explained that due to shortage of staff and heavy pressure of work then managers were unable to file return within due date - It was also explained that due to lack of information of PAN of deductees, filing of return was delayed - Assistant Commissioner, however, rejected explanation of assessee and imposed penalty under section 272A(2)(k) - Whether since there was neither any wilful negligence nor any mala fide on part of assessee in matter of compliance and delay was due to reasonable cause, impugned order of penalty was to be cancelled - Held, yes [Paras 9 & 10] [In favour of assessee]."

C) Branch Manager, State Bank of India v. ACIT [2014] 41 taxmann.com 268 (Cuttack - Trib.):

Head note ".Section 272A of the Income-tax Act, 1961 - Penalty - For failure to answer question, sign statements, etc. [Delay in filing e-TDS return] - Assessment year 2009-10 - There was a delay of 848 days in first quarter, 756 days in second quarter, 664 days in third quarter and 513 days in fourth quarter of financial year 2008-09 on part of assessee-bank in filing e-TDS return - Assessing Officer imposed penalty upon assessee - Assessee explained that section 272A(2)(k) being a new provision, branch manager was not known to its technical formalities; that thereafter, bank engaged an advocate for preparing statement, who found difficulty in completing detailed

statement in absence of PAN of all customers and that, therefore, there was delay in filing e-TDS return - Whether assessee had reasonable cause for non-filing of return in time and, therefore, penalty imposed by Assessing Officer was to be deleted - Held, yes [In favour of assessee].”

4.6 Further, attention is drawn to page 5 of order of Id. AO, wherein it has been held as under:

“It is important to note that the delay in filing the TDS return by the deductor, does not provide the TDS credit with the account of deductee and delays the refund process too. The deductee being unaware of the delay in the return filing expects the credit of the same by the department on the specified date. As this cannot be done, due to the negligence/intentional misconduct of the deductor, the deductee is stressed. Beside, the paper work of the department increases in verifying the demand for processing the refund and manpower is also employed for the work which was really not required”

In this regard, it is submitted that the delay in filing TDS return is not because of fault of assessee but because of deductees themselves. The deductees were reluctant to provide their PAN to the assessee which resulted into non filing TDS return in the stipulated time frame. Therefore, the contention of Id. AO that the deductees being unaware of delay in return filing, expect the credit of the same by the department on the specified date does not hold good. The deductees were well aware of the fact that until PAN is provided to the assessee the TDS return cannot be filed by the assessee and consequently TDS credit cannot be claimed.

The contention of AO that the deductees are stressed has no merit because they themselves were preventing the assessee to file the TDS return in time. Needless to mention that instead of deductees being stressed the Ld. AO should mention the deductor was stressed because of that repetitive efforts made by him to collect the PAN from the deductee.

4.7 The Ld. AO as well as Id. CIT(A) misplaced their reliance on the following judicial pronouncements, because the facts of the cases relied upon and the facts of the assessee's case are different as submitted below:

S.No	Facts of Shah Traders v. DCIT(Patna Bench) [1996] 56 ITD 33 (PAT.)	Case of Assessee
1.	Penalty u/s 272A(2)(c)	Penalty u/s 272A(2)(k)
2.	In the case return was not furnished even after issuing show cause notice.	In the case return was furnished before issuing show cause notice.
3.	The assessee further did not file return till the date of penalty order.	The assessee filed its TDS Return well before the penalty order dated 29.04.2013.
4.	No reasonable cause of delay was put forward to the CIT(A) by the assessee.	Genuine reasons and reasonable cause was put forward before CIT (A).

S.No.	ACME Consumtion Co. v. DCIT(ITAT Patna Bench) [1999] 68 ITD 1 (PAT.)	Case of Assessee
1.	Penalty u/s 272A(2)(c)	Penalty u/s 272A(2)(k)
2.	In the case mentioned above two major issues were addressed: <ul style="list-style-type: none"> • Firstly the assessee had not deducted TDS u.s 194 C • Secondly TDS return was not filed even after the issue of show cause notice on the grounds that since T.D.is not deducted there is no requirement of furnishing TDS return. 	<ul style="list-style-type: none"> • In the case of Assessee the tax was deducted and deposited with the Government well before show cause notice. • The Statement of Return under IT, Act was furnished well before the issuance of show cause notice.
3.	There was no reasonable cause of the failure.	There was reasonable cause of the failure.
4.	The assessee failed to obtain the exemption certificate from the concerned AO for non deduction of TDS of the deductee and just on the	The assessee deducted TDS and also deposited the same with the Government.

	basis of the letter provided by the deductee did not deduct the TDS.	
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S.No.	Veena Theater v.CIT(High Court of Patna) [2010] 322 ITR 260 (PAT.)	Case of Assessee
1.	Penalty u/s 272A(2)(g)	Penalty u/s 272A(2)(k)
2.	The reasons provided by the assessee for non filing the return within time was that there was a criminal suit filed against the managing partner and the managing partner was granted anticipatory bail. Thus, the same was not considered a reasonable cause.	In the case of assessee the reasons put forward by the assessee has direct nexus with the law since without obtaining PAN return under the law cannot be filed.

5. The DR is heard who has vehemently argued the matter and submitted that the order of the Assessing Officer levying penalty u/s 272A(2)(K) of the Act is correct and the Id CIT(A) is justified in confirming the same.

6. We have heard the rival contentions and perused the material available on record. Firstly, it is noted that the penalty has been levied u/s 272A(2)(K) of the Act which talks about the failure to deliver a copy of the statement within the time specified in section 200(3) or proviso to section 206C (3) of the Act. In the instant case, there is no such factual situation before us rather there is a delay in filing of quarterly e-TDS returns which is covered under the provisions of section 272A(2)(C) of the Act. Hence, on this ground itself, where the Assessing Officer is not clear about basis of the charge, the levy of penalty cannot be sustained.

7. On merits, it is noted that during the financial year 2010-11 which is under consideration before us, there was a change which was brought about

in filing of e-TDS returns wherein there was a necessity to mention 100% valid Permanent Account Numbers of the payee to whom the payment has been made and TDS done in such payment in the e-TDS return and thereafter only the e-TDS return can be validated and uploaded in the IT system. The same has been the position of the CBDT vide its notification dated 31.5.2010. The assessee has submitted that since there were large number of deductees scattered throughout the country, a fact not disputed by the Revenue, it took them some time to collect the PANs of these deductees and thereafter, it was able to upload the e-TDS returns in the IT system maintained by the Revenue. Further, the taxes have deducted and deposited at the prescribed rate with delay of few days. Hence, there is no loss to the Revenue which is caused due to the delay in filing of the e-TDS returns which is totally unintentional. Further, our attention was drawn to the decision of the Coordinate Benches in case of Collector Land Acquisition, UCO Bank and SBI (supra) wherein non availability of PAN was held to be a reasonable cause for delay in filing of the e-TDS return. Given the peculiarity of the facts in the present case where there was a change effected in the IT system for mandatory requirement of PANs of all deductees before the returns can be validated and uploaded, the fact that there were large number of deductees spread throughout the country and efforts were made by the assessee to obtain their PANs numbers, the fact that taxes have been deducted and deposited, hence no loss to the Revenue, we find that assessee has a reasonable cause for delayed filing of its e-TDS returns in terms of section 273B and the penalty under section 272(A)(K) is hereby deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24/05/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur
Dated:- 24/05/2017

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

1. अपीलार्थी / The Appellant- M/s Argus Golden Trades India Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The ACIT, JCIT, TDS, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT,
6. गार्ड फाईल / Guard File (ITA No.522/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.