IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND
MS. ANNAPURNA MEHROTRA, ACCOUNTANT MEMBER

ITA No.450/Ag/2015

Assessment Year:2009-2010

ITO (TDS),	Vs.	Pushpanjali Hospital and Research Centre Pvt. Ltd.
Agra ,		Delhi Gate, Agra
		TAN No. AGRP10281F
(Appellant)		(Respondent)

Appellant By : Sh. Waseem Arshad
Respondent By : Sh. Dipendra Mohan
Ms. Prathna Jalan

Date of hearing : 04/02/2016
Date of Pronouncement : 12/04/2016

ORDER

PER ANNAPURNA MEHROTRA A.M.

This appeal has been filed by the Revenue against the order of Ld. CIT(A)-1, Agra dt. 12/03/2015 deleting the penalty levied under section 271C of the Act.

2. The Revenue has raised the following grounds of appeal.

1. *That the Ld. CIT(A)-1, Agra has ignored erred in law and on facts in cancelling the order u/s 271C of I.T. Act, 1961 without properly appreciating the facts of the case.*
2. *That the Ld. CIT(A)-1, Agra has ignored the fact that being deductor / the bank was liable to deduct TDS on the payments made which comes under the limits of TDS slab unless certificate u/s 197 of the I.T. Act 1961, is furnished by the deducteee.*
3. *That the Ld. CIT(A) has ignored the findings of the A.O. as the assessee has himself accepted / admitted that his TDS is being deducting in respect of income from other fields / heads.*
4. *The facts and circumstances of the case laws as mentioned in the order of the Ld. CIT(A) is different in connections with instance case.*
5. *That the order of the Ld. CIT(A)-1, Agra being erroneous in law and facts be set aside and that of the AO be restored.*

3. Brief facts relating to the case are that a survey 133A of the Act was conducted in the premises of the assessee on 15/10/2009 during the course of which it was found that the assessee had deducted tax amounting to Rs.

15,76,219/- under various section of the Income Tax Act but had not deposited the same to the Government account. Thereafter order under section 201(1)/201(1A) of the Act was passed on 26/02/2009 raising gross demand of Rs. 16,39,448/- comprising of tax under section 201 of Rs. 15,76,219/- and interest under section 201(1A)of Rs. 63,229/- and further penalty proceedings under section 271C were initiated. During the course of penalty proceeding the assessee pleaded that the tax deducted had not been deposited because the concerned person who was looking into the taxation matter had left the job. However the AO rejected the submission of the assessee observing that the assesse had not deposited the tax deliberately. Ld. AO held that If the survey had not been conducted, the assessee would have embezzled the amount of tax deducted. Further, the AO referred to the decision of Hon'ble Kerala High court in the case of U.S. Technologies International(P)Ltd. V. CIT (2010) 195 TAXMAN 323, and levied penalty under section 271C of the Act amounting to Rs. 15,76,219/-.

4. Before the Ld.CIT(A) the assessee pleaded that penalty under section 271C is leviable only for non deduction of tax at source and since this was not the case in the case of the assessee, no penalty under section 271C could be levied. The assessee alternatively submitted that it had reasonable cause for not depositing the tax deducted and filed an affidavit of the concerned person who was handling the tax matter of the company and had left the job causing not deposit of the tax deducted at source. Ld. CIT(A) after going through the assessee's submission allowed the assesses appeal by holding that the assessee had a reasonable cause for not depositing the tax deducted at source.

5. Ld. CIT(A) held at para 10 & 11 of his order as follows:

> *10. I have gone through the submission as made by the appellant, the relevant record as well as the judicial decisions referred to by the appellant and the AO. Admittedly in this case the default on the part of the appellant is not of non deduction of tax at source. The AO has admitted that the tax has been deducted under various sections but the same was not paid within the*

prescribed time provided under section 200(1) read with Rule 30 of I.T. Rules. The Financial Year under consideration is 2008-09 that too from 1.4.2008 to 15.01.2009, the date on which survey was conducted. No default was detected for the preceding years. Therefore, it is clear that the assessee was deducting and paying the TDS regularly. The payment of TDS for the month of April, 2008 was due by 7th of May, 2008, for the May, 2008 was due on 7th June, 2008 and so on. Thus the maximum delay was of 8 months. Thus, it was a case of delay in deposit the TDS.

11. As regards the decision of Hon'ble Kerala High Court in the case of U.S. Technologies International (P) Ltd. V. CIT(2010) 195 TAXMAN 323 as relied upon by the AO in his order, it is observed that in the said case it was held that penalty u/s 271C will be attracted in the case were the TDS was not remitted after deducted but issue of reasonable cause still be considered. In the case relied upon by the A.O. the payment of TDS was made after the expiry of financial year, whereas in the present case appellant has paid the tax within the financial year and for the delay the appellant duly established the reasonable cause in form of mistake of Manager (Accounts & Finance) and in support affidavit has also been filed. It is pertinent to mention that for the same reason, for the same period, penalty for late filing of TDS returns have been dropped by the JCIT(TDS) considering the issue of reasonable cause. I my view only this aspect may be adjudged with possible one view, either to accede to it or reject it. It cannot be a case of adopting different view for the default of the same nature. The same reasonable cause has been accepted for delay in furnishing the quarterly returns but for delay in deposit of TDS has levied the impugned penalty. In view of the above, I find that the appellant was prevented by reasonable cause for delay deposit of TDS by only 8 months, for which interest has duly been paid. Thus the penalty of Rs. 15,76,219/- as imposed against the appellant by the AO u/s 271C of the Act by is hereby deleted.

6. Aggrieved by the same the Revenue has filed the present appeal before us.

7. Before us the Ld. DR pleaded that there was no reasonable cause as such with the assessee for not depositing the tax deducted at source and that the default was deliberate. Ld DR pleaded that the assessee was only trying to shift its liability to its ex-employee and the same cannot constitute reasonable cause for the default committed. Ld. Dr therefore argued that it was a fit case for levy of penalty under section 271C.

8. Ld. AR on the other hand reiterated the submissions made before the Ld. CIT(A) and stated that penalty under section 271C is leviable only for non deduction of tax at source and not for non depositing the tax deducted at source. Ld. AR referred to Section 271 C in this regard and stated that plain reading of the section leads to the above inference. Ld. AR also referred to the Circular No. 551 dt. 23/01/1990 being explanatory notes on the provisions of

Direct Tax Laws (Amendment) Act, 1987 and argued that while enacting the provisions of Section 271C by the Finance Act, the intention of the legislature was to attract penalty for non deduction tax at source only and not non-deposit of the Tax Deducted at source. Ld. AR further stated that the assessee had reasonable cause for not deducting tax at source as held by the Ld. CIT(A) and in view of number of jurisdictional decision in this regard including the Apex court decision in the case of CIT Vs. Bank of Nova Scotia 2016(1) TMI 583 (SC), there was no case for levy of penalty.

9. Ld. DR rebutted the assessee argument by stating that the Kerala High Court in the case of U.S. Technologies International(P)Ltd. V. CIT (2010) 195 TAXMAN 323 has held that penalty under section 271C is leviable even for the default of not depositing the tax deducted at source.

10. We have heard the rival submissions and perused the order of the authorities below.

11. The only issue in the present appeal is the levy of penalty under section 271C for the default committed by the assessee in not depositing the tax deducted at source of Rs. 15,76,219/-.

12. We find that It is not in dispute that the assessee had deducted tax amounting to Rs. 15,76,219/-. The only default committed by the assessee was failure to deposit the same to the Government.

13. The Ld. AR has pleaded that there was reasonable cause for the default committed by it. Ld. AR has stated that since the manager handling its taxation matters had resigned during the year it had failed to deposit the tax deducted at source. Ld. AR pointed out that no such default had occurred in earlier years and it was only in this year, when the manager handling taxation matter left the assessee, the default occurred. Ld. AR substantiated his argument with the

affidavit of the manager in this regard. Ld. AR further pointed that the same reason had been accepted to constitute reasonable cause by the Ld. JCIT for not levying penalty under section 272(A)(2)(k) of the Act, for late deposit of TDS Returns. Ld. AR therefore pleaded that the same reason cannot now be held to not constitute reasonable cause.

14. Before adjudicating on the issue, it is pertinent to understand what is meant by reasonable cause. "Reasonable cause" for the purpose of application of Section 271C in the backdrop of Section 273B has been explained by the Hon'ble Delhi High Court in the case of Woodward Governors India (P) Ltd. Vs. CIT (2002) 253 ITR 0745 to mean a probable cause, an honest belief founded on reasonable grounds, of the existence of a state of circumstances, which assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the person concerned to come to the conclusion that same was the right thing to do. The cause should not be found to be frivolous, without substance or foundation.

Measured on the touchstone of the definition of reasonable cause as stated above we find the Ld. CIT(A) has rightly held that the explanation offered by the assessee that the resignation of the manager handling the taxation matter of the assessee, supported by the affidavit of the manager, constituted reasonable cause for committing the default. We also agree with the Ld. CIT(A) that when the same reason was found to constitute reasonable cause for not levying penalty u/s 272(A)(2)(k)of the Act by the Ld. JCIT(TDS) it could not be held otherwise for the purpose of levying penalty under section 271C.

We therefore hold that in view of the reasonable cause adduced by the assessee no contumacious conduct can be attributed to the assessee and therefore no penalty under section 271C is leviable. We find support for this

proposition in the decision of the Hon'ble Supreme Court in the case of CIT Vs. Bank of Nova Scotia Civil Appeal No. 1704 of 2008 dt. 07/01/2016..

15. In view of the above we uphold the order of the Ld. CIT(A) and delete the penalty of Rs. 15,76,219/- levied under section 271C of the Act.

16. In the result appeal of the Revenue is dismissed.

Order pronounced in the Open Court.

Sd/-	**Sd/-**
(BHAVNESH SAINI)	**(ANNAPURNA MEHROTRA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 12/04/2016
AG
Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR