

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : B : NEW DELHI
BEFORE SHRI R.S. SYAL, AM & SHRI N.K. CHOUDHRY, JM

ITA No.2370 & 2371/Del/2014
Assessment Year : 2010-11 & 2011-12

District Public Relation Officer, Vs. JCIT,
C/o M.K. Dudeja, Advocate, TDS Range,
3G/162, NIT, Gurgaon.
Faridabad.

TAN: RTKD03794A

Assessee By : Shri M.K. Dudeja, Advocate
Deptt. By : Shri Anil Kumar Sharma, Sr. DR

Date of Hearing : 18.08.2016
Date of Pronouncement : 18.08.2016

ORDER

PER R.S. SYAL, AM:

These two appeals by the assessee are directed against the separate orders passed by the CIT(A) on 30.03.2012 confirming penalty imposed u/s 272A(2)(k) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment years 2010-11 and 2011-12. Since both the appeals

are based on similar facts and identical grounds, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

Assessment Year 2010-11.

2. The only issue is against the confirmation of penalty amounting to Rs.42,300/- imposed and confirmed u/s 272A(2)(k) of the Act.

3. Briefly stated, the facts of the case are that the assessee was required to file e-TDS return in Form No.24Q and 26Q in respect of deduction of tax at source for the four quarters falling in the previous year relevant to the assessment year under consideration. The AO observed that the assessee filed its return in Form No.24Q/26Q late as per the following details:-

S.No.	Qtr.	Date of filing	Delay in days	TDS liability
1.	Q-3	13.06.2011	363	85709
2.	Q-4	13.06.2011	514	6000

4. The assessee submitted reasons for delay in filing e-TDS returns. Not convinced, the AO imposed penalty amounting to Rs.42,300/- for default in late filing of e-TDS returns. Such penalty came to be affirmed in the first appeal.

5. After considering the rival submissions and perusing the relevant material on record, it is observed that the assessee is a Government office. TDS on salary of employees was deducted in time and also promptly paid on the same day. Returns of the TDS were filed by the bill clerk by post in time. Later on, when the Income-tax Department required the assessee to file such returns online, the assessee filed such returns accordingly. Thus, it can be seen that the default is only in late e-filing of the TDS returns. Not only the tax was deducted at source and paid in time to the exchequer, the assessee also filed TDS returns in time manually even in respect of the quarters for which the penalty has been imposed. Copies of

such manually filed TDS returns are available at pages 5 and 6 of the paper book.

6. Section 272A(2)(k) of the Act imposing penalty for default in delivering a copy of the statement within the specified time as given u/s 200(3) is subject to section 273B. Later provision provides that if there is a reasonable cause for not complying with the provisions of section 272A(2)(k), no penalty would be imposed. Adverting to the facts of the instant case, we find that the work of filing TDS returns was being done by a clerk, who got transferred. Even otherwise, there is no willful intention of the assessee in late filing of the returns because such returns were manually filed in time though the default is only for the delay in e-filing of the TDS returns. In our considered opinion, the assessee has made out a case of a reasonable cause in not complying with the provisions of the Act, whose violation attracts penalty u/s

272A(2)(k) of the Act. We, therefore, order to delete the penalty confirmed in the first appeal.

Assessment Year 2011-12.

7. Both the sides are in agreement that the facts and circumstances for the instant year are *mutatis mutandis* similar to those for the assessment year 2010-11. For this year, there was a default in filing of e-TDS returns for three quarters, which were admittedly filed manually in time, whose copies are available on pages 5 and 8 of the paper book. In view of the similarity of the facts and circumstances for this year with the earlier year, following the view taken hereinabove for the said earlier year, we order for the deletion of extant penalty for this year as well.

8. In the result, both the appeals are allowed.

Order Pronounced in the open Court on 18.08.2016.

Sd/-

[N.K. CHOUDHRY]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 18th August, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.