

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCHES 'J' MUMBAI**

**ITA No.1232/Mum/2010
Assessment Year: 2006-2007**

**INCOME TAX OFFICER (TDS)
RANGE-2(3) MUMBAI**

Vs

**M/s MORAJ BUILDING CONCEPTS PVT LTD
NAVI MUMBAI
PAN NO:AABCM8573A**

R V Easwar, President and B Ramakotaiah, AM

Dated: March 18, 2011

Appellant Rep by: Shri Sumeet Kumar
Respondent Rep by: Shri Pradeep Kapasi

ORDER

Per: R V Easwar:

This appeal is by the revenue and it relates to the assessment year 2006-07. The only ground taken is that the CIT(A) erred in cancelling the penalty of Rs.2,14,550/- imposed on the assessee under section 272A(2)(c) of the Income Tax Act, 1961.

2. The assessee is a private limited company. It was bound to deduct tax from certain payments made by it. The tax was duly deducted. However, the assessee failed to comply with section 206 / 206C of the Act. Under section 206, persons deducting tax are liable to furnish prescribed returns within a particular time limit. The time limit was fixed by the Income Tax Rules. The assessee failed to furnish the returns within the time prescribed by the Rules in respect of the four quarters comprised in the financial year 2005-06. These details are given in the form of a table in the penalty order and are not reproduced for the sake of brevity. The delay ranges from 733 days to 1031 days and the total penalty levied is Rs.2,14,550/-. Apparently, the explanation adduced by the assessee before the Assessing Officer was not accepted as constituting reasonable cause within the meaning of section 273B of the Act. The CIT(A), however, cancelled the penalty, against which the revenue is in appeal.

3. The only question to be considered is whether there was any reasonable cause for the assessee for the delay. The CIT(A) has entered the following findings: -

(a) Section 200(3) is the applicable provision and this provision was inserted with effect from 01.04.2005 by the Finance (No.2) Act, 2004. This was the first year after the introduction of the provision.

(b) Under Rule 31A of the Income Tax Rules, the assessee has to obtain Permanent Account Numbers from the deductees. Since the deductees were small time labourers, there was difficulty in collecting those details from them.

(c) The nature of the contract was such that the assessee had to employ labour contractors from many unorganized sectors, which made it more difficult to collect the Permanent Account Numbers.

(d) The Chief Accountant of the assessee company, who was working with it for the past ten years and was looking after of the TDS and IT related compliances, resigned. He was replaced by another Accountant, who also resigned and had to be replaced.

(e) Every corporate assessee has faced similar difficulties in preparing the statements or in filing them in electronic form.

(f) Despite all the difficulties, the quarterly TDS returns ultimately were filed by the assessee voluntarily without being prompted by any notice from the department.

(g) There is no revenue loss since the tax has been deducted and paid to the Government. Only the paper work was delayed, which is only a technical breach.

4. The above findings, in our opinion, also constitute reasonable cause for the delay. We may clarify that though the penalty order refers to section 206 / 206C, the default, as found by the CIT(A) and as explained before us, is under section 200(3) of the Act. It may also be added that the penalty order seems to be in a cyclostyled form without referring even to the appropriate section. This may show non-application of mind. Be that as it may, the only question before us is whether the assessee was prevented by reasonable cause by filing the returns in time, within the meaning of section 273B of the Act. On the findings recorded by the CIT(A), which are not disputed before us by the revenue, we are unable to say that the assessee was not prevented by reasonable cause. We accordingly uphold the order of the CIT(A) cancelling the penalty and dismiss the appeal filed by the revenue with no order as to costs.

(Order pronounced in the Open Court on 18.3.2011.)