IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 314/2013

COMMISSIONER OF INCOME TAX-TDS ..... Appellant

Through: Mr.Karan Khanna, Sr. Standing Counsel

versus

DHTC LOGISTICS LTD. ..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

26.07.2013

1. There are two reasons why we feel the present appeal should not be entertained.

2. Firstly, the assessing officer in the penalty order under Section 272B has not specifically referred to any default or failure by the respondent-assessee mentioning PAN Number even when the said particulars and details were available. The stand taken by the respondent was that the PAN Numbers were not furnished by the Truck owners and, therefore, they were not quoted by them or PAN Numbers as informed were quoted. In case, the PAN Numbers are not furnished by the deductees, the respondent- assessee cannot be penalized under Section 272B. Section 139A also imposes the obligation on the deductees to furnish PAN Number to the deductor.

3. Secondly, the stand taken by the revenue is contrary to the stand taken by Central Board of Direct Taxes. The assessing officer had imposed penalty of Rs.10,000/- in each case where PAN Number was not provided by the deductee. There were in all 30706 cases in which the PAN Number was missing or was incorrectly stated. The assessing officer, accordingly, imposed penalty of Rs.10,000/- in each case. Thus, penalty of Rs.30,70,60,000/- was imposed. Board

in the letter dated 5.8.2008 vide No.275/24/2007-IT(B) has clarified that penalty of Rs.10,000/- under Section 272B is linked to the person, i.e., the deductor who is responsible to deduct TDS, and not to the number of defaults regarding the PAN quoted in the TDS return. Therefore, regardless of the number of defaults in each return, maximum penalty of Rs.10,000/- can be imposed on the deductor. Penalty cannot be imposed by calculating the number of defective entries in each return and by multiplying them with Rs.10,000/-. This also appears to be a legislative intent, as in many cases, the TDS amount may be small or insignificant fraction of Rs.10,000/-.

4. We clarify that we have not examined in this appeal, question and issue that if a deductee has made a representation to the deductor and inspite of the said representation, proper details and particulars are not correctly mentioned/recorded by the deductor, whether penalty under Section 272B can be imposed, as a separate case.

5.In view of the aforesaid position, we do not think any substantial question of law arises for consideration.

The appeal is dismissed.

SANJIV KHANNA, J

SANJEEV SACHDEVA, J

JULY 26, 2013/sv

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B' NEW DELHI

BEFORE SHRI S.V.MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI KULBHARAT, JUDICIAL MEMBER

I.T.A .Nos.-675,676 & 677/Del/2012
(ASSESSMENT YEAR-2005-06 to 2007-08)

ACIT Circle 49(1), New Delhi.	Vs.	DHTC Logistics Ltd., 14, Indra House Community Centre, New Friends Colony, New Delhi PAN-DELDO6553B
(A**PPELLANT)**		**(RESPONDENT)**

Appellant by: Sh. S.Krishna, CIT DR.
Respondent by: Sh. Rakesh K. Sehgal, CA.

Appeal heard on-05.09.2012
Order pronounced on-14.09.2012

ORDER

PER KULBHARAT, JM

These three appeals of the assessee are directed against the order of Ld. CIT(A)-XXX, New Delhi dated 17.11.2011 for the AYs 2005-06 to 2007-08.

2. All these appeals are arising out of common order and raised identical grounds of appeal. Hence, these are heard together and are being disposed off by a consolidated order.

3. The revenue has raised the identical grounds of appeal in all the three appeals which reads as under:-

> *"1). In deleting the penalty of Rs. 30,70,30,000/- levied u/s 272B of the IT Act by the A.O Cir. 49(1) holding that the penalty is per person (appellant) and not per PAN.*
> *2). In directing the A.O to collect the penalty demand of Rs. 30,000/- u/s 272B of the IT Act as per per person (appellant) per year.*
> *3). In appreciating the fact that the Section 139(5B) is to be read in conjunction with Section 272B, if these two sections are read together, the intend of the legislation becomes apparent that the penalty is to be levied per PAN in the TDS return and not per person."*

The facts are identical in all these appeals, hence the facts of **ITA No.675/Del/2012** are being taken as a lead case.

4. The facts in brief are that the Assessing Officer issued a show cause notice for levying penalty u/s 272B r.w.s 139A(5B) in respect of missing PAN of deductee in the TDS return. The assessee in respect of thereto made a detailed reply. However, the Assessing Officer did not accept the explanation offered by the Counsel for the assessee and imposed a penalty of Rs. 30,70,60,000/- i.e @ Rs. 10,000/- for missing/incorrect PAN of 30706 deductees. The assessee feeling aggrieved by the order of the Assessing Officer preferred an appeal to Ld. CIT(A) who after considering the submissions reduced the penalty to Rs. 30,000/-. Against this order, the revenue has filed the instant appeals.

5. Ld. CIT DR strongly relied upon the order of the Assessing Officer and submitted that section 272B of the Act is to be read in conjunction with section 139A(5B) of the Act. He submitted that non-mentioning of the PAN, made the deductor liable for penalty u/s 272B and such penalty is leviable on each default. On the contrary, Ld. AR of the assessee submitted that the tax at source is deductible u/s 194C of the Act in respect of the payment made. He submitted that section 194C(6) envisages that no tax is deductible in the event i.e PAN is furnished. He submitted that in this case the PAN was not made available by the deductee to the deductor assessee company. He submitted that even otherwise also in terms of Board's letter dated 05.08.2008 No. 275/24/2007-IT(B), the penalty u/s 272B is not leviable in respect of default. He submitted that it has been clarified therein that the penalty is linked to the person and not with the number of defaults in the PAN quoting in the e-TDS return. He also relied on the decision of the Hon'ble ITAT, Banglore Bench, rendered in ITA NO. 907,908 & 909 (Ind.) 2008 wherein it has been observed that there is no mechanism at the end of the assessee deductor to compel deductee to provide PAN.

6. We have heard the rival submissions perused material available on record. Ld. CIT(A) has restricted penalty to the tune of Rs. 30,000/- in all these appeal following the clarification embodied in the CBDT letter dated

05.08.2008. Since this fact is not disputed by the revenue that CBDT has issued a clarification whereby it has been clarified penalty u/s 272B of Rs. 10,000/- is linked to the person and not with the number of defaults.

7. Hence, we do not find any infirmity into orders of Ld. CIT(A), this ground of the appeal is rejected since the facts of the grounds are identical in all the three appeals i.e ITA No. 675, 676 & 677/Del/2012.

8. In the result, all these three appeals of the revenue are dismissed.

Order pronounced in the Open Court on 14.09.2012.

Sd/- Sd/-

(S.V.MEHROTRA) **(KULBHARAT)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 14/09/2012
Amit Kumar

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI