IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA Nos.492 to 495/Del/2014
Assessment Year : 2010-11

ITO (TDS), Rohtak.	Vs.	The Executive Engineer, Provisional Division, Public Health, Baag Jawahra, Jhajjar. PAN: RTKE00639C
(Appellant)		(Respondent)

Assessee By : None
Department By : Shri Amrit Lal, JCIT

Date of Hearing : 15.06.2015
Date of Pronouncement : 15.06.2015

ORDER

These four appeals by the Revenue arise out of a common order passed by the CIT (A) on 6.12.2013 deleting the penalty imposed u/s

272B of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the financial year 2009-10.

2. Briefly stated, the facts of the appeal no. 492/D/2014 are that the assessee filed quarterly e-TDS Quarterly statement of deduction of tax in Form No.26Q for the first quarter of the financial year 2009-10. On processing of the aforesaid return, it was observed that PANs of as many as 56 tax-deductees were invalid and the assessee deductor did not submit correct PANs in respect thereof. On being show caused as to why penalty u/s 272B of the Act be not imposed, the assessee furnished its reply dated 9.1.2012 submitting the copies of correction returns duly stating PANs of a few tax deductees which were not earlier available. The AO invoked the provisions of section 139(5B) and imposed penalty @ Rs.10,000/- per breach amounting in total to Rs.5,60,000/- for the first quarter of the year. Similar is the position for the remaining three quarters for which the AO imposed penalty at Rs.9,40,000/-, Rs.8,16,000/- and Rs.8 lac. The assessee preferred appeals against the orders passed by the AO u/s 272B of the Act. The ld. CIT(A) concurred

with the submissions advanced on behalf of the assessee and ordered for the deletion of penalty imposed for four different quarters of the financial year 2009-10. The Revenue is aggrieved against the deletion of such penalty.

3. I have heard the ld. DR and perused the relevant material available on record. There is no appearance from the side of the assessee despite notice. As such, I am proceeding to dispose of these appeals *ex parte qua* the assessee.

4. It is observed that the AO imposed penalty u/s 272B for violation of the provisions of section 139(5B), which read as under:-

> "139A.
>
> (5B) Where any sum or income or amount has been paid after deducting tax under Chapter XVIIB, every person deducting tax under that Chapter shall quote the permanent account number of the person to whom such sum or income or amount has been paid by him—
>
> (i) in the statement furnished in accordance with the provisions of sub-section (2C) of section 192;
>
> (ii) in all certificates furnished in accordance with the provisions of section 203;

(iii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206 to any income-tax authority;

(iv) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200:

……..”

5. A careful perusal of this provision indicates that where an amount has been paid after deducting tax, then, the person deducting tax is required to quote the Permanent Account Number in the statements mentioned in the provision. Non-compliance with the mandate of section 139A attracts penalty u/s 272B, the relevant part of which reads as under:-

“Penalty for failure to comply with the provisions of section 139A.

272B. (1) If a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(2) If a person who is required to quote his permanent account number in any document referred to in clause (c) of sub-section (5) of section 139A, or to intimate such number as required by sub-section (5A) or sub-section (5C) of that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

> (3) No order under sub-section (1) or sub-section (2) shall be passed unless the person, on whom the penalty is proposed to be imposed, is given an opportunity of being heard in the matter."

6. It is obvious that the provisions of sub-section (2) are not attracted when there is a violation of sub-section (5B) of section 139A. Such violation shall be covered under the provisions of sub-section (1) which provides that in case of a failure `to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.' I am confronted with a situation in which the assessee originally did not have the correct PANs of all the persons from whose payments, tax at source was required to be deducted. Despite that, the assessee did deduct tax at source and paid the amount to the exchequer well in time. The only fault of the assessee was in not filling PANs of some of the deductees which were not available at the time of filing e-returns. As soon as the AO issued notice for imposing penalty u/s 272B, the assessee obtained the relevant PANs and complied with the requirement by filing the revised statement.

7. At this juncture, it is pertinent to note that the provisions of section 272B are subject to section 273B of the Act, which provides that notwithstanding anything contained in the provisions, *inter alia,* of section 272B, no penalty shall be imposed for any failure referred to in the said provision if it is proved that there was a reasonable cause for the said failure. Considering the entirety of the facts and circumstances prevailing in the instant case, I find that there was a reasonable cause in the assessee not mentioning the correct PANs in respect of a few deductees at the time of originally filing e-TDS quarterly statement of deduction of tax in Form No.26Q, which were in fact, not available with the assessee at the material time. As and when the necessary information was obtained, the assessee corrected the lapse and revised the statement by furnishing due particulars thereof. In my considered opinion, the ld. CIT(A) was justified in deleting the penalty by relying on the judgment of the Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. Vs. State of Orissa (1972) 83 ITR 26 (SC),* in which the Hon'ble Supreme Court has laid down that penalty cannot be ordinarily imposed unless the party obliged either acts deliberately in defiance of

law or is guilty of conduct contumacious or dishonest, or acts in conscious disregard of its obligation. I find that the judgment of the Hon'ble Supreme Court is fully applicable in the facts and circumstances as are instantly prevailing. As such, I approve the view taken by the ld. CIT(A) in deleting the penalty for all the four quarters of the financial year 2009-10.

8. In the result, all the four appeals stand dismissed.

The order pronounced in the open court on 15.06.2015.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 15th June, 2015.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.